IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1789

ARKANSAS LOUISIANA GAS COMPANY,
Petitioner,

v.

FRANK J. HALL, W. E. HALL, JR., MRS. W. E. HALL, SR.; THE H.M. HARRELL TESTAMENTARY TRUST, JAMES E. HARRELL, JOHN K. HARRELL, SR., ASA BENTON ALLEN, SIDNEY G. MYERS, JR., W. O. COCHRAN, THOMAS F. PHILYAW, MRS. ELAINE ALLEN, JAMES A. NOE, D. B. MCCONNELL, MRS. EVA L. WEISS, SOL KAPLAN and NATIONAL AMERICAN BANK, New Orleans, Co-Testamentary Executors of the SUCCESSION OF SEYMOUR WEISS,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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THE QUESTIONS PRESENTED BY ARKLA'S PETITIONS FOR WRITS OF CERTIORARI.

In seeking to have this Court review the consistent jurisdictional decisions of the Louisiana state district court[1], the Louisiana state court of appeal[2], the Louisiana Supreme Court[3], the United States district court for the western district of Louisiana[4], the Federal Power Commission ("F.P.C.")[5] and the Federal Energy Regulatory Commission ("F.E.R.C.")[6] *and* the substantive legal and contractual decisions of the Louisiana courts below on the merits of the instant breach of contract and damage case, Arkansas Louisiana Gas Company ("Arkla") is obviously seeking to protect and maintain its *own* private unjust enrichment and additional corporate profits[7] wrongfully derived and obtained at Respondents' loss, damage, detriment and expense by virtue of Arkla's *own* continued breach of contract and effective concealment of

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[1] *Frank J. Hall, et al* v. *Arkansas Louisiana Gas Company*, Suit No. 225,699, First Judicial District Court, Caddo Parish, Louisiana.

[2] *Frank J. Hall, et al* v. *Arkansas Lousiana Gas Company*, 359 So.2d 255 (La.App. 1978).

[3] *Frank J. Hall, et al* v. *Arkansas Louisiana Gas Company*, 368 So.2d 984 (La.S.Ct. 1979).

[4] *Frank J. Hall, et al* v. *Arkansas Louisiana Gas Company*, Docket No. CA 75-1168, United States District Court, Western District of Louisiana (1976).

[5] *Arkansas Louisiana Gas Company* v. *Frank J. Hall, et al*, Docket No. RI76-28, Federal Power Commission.

[6] *Arkansas Louisiana Gas Company* v. *Frank J. Hall, et al*, Docket No. RI76-28, Federal Energy Regulatory Commission.

[7] During the fourteen years that Arkla continuously breached and violated Respondent's private contractual rights and effectively withheld and concealed all of the true, relevant and ma-

all of the true facts from Respondents from 1961 through 1975. Arkla, under the guise of protecting the "relevant public interest" against *excessive prices* for residue natural gas as sold in interstate commerce, an issue that is clearly not involved or adversely affected in this case, is obviously seeking to escape and evade its *own* independent legal and contractual obligation to respond in compensatory damages out of its *own* corporate profits for the actual losses and damages sustained by Respondents due to Arkla's continued breach of contract and wrongful misconduct for fourteen years.

Arkla by means of its two petitions for writs of certiorari as filed with this Court rather diffusely and in an interwoven fashion has commingled and asserted three complaints with respect to the decisions of the six tribunals that have ruled on the jurisdictional and/or contractual issues as presented in this case.

Arkla, in its first petition for a writ of certiorari as filed with this Court on December 18, 1978, Docket No. 78-986 and in its "supplemental briefs", has in order to protect its *own* private unjust enrichment

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terial facts concerning its continued breach of contract from Respondents, Arkla amassed over $500,000,000.00 in net profits for its stockholders. Arkla, in its annual report for 1978, has disclosed that for the year it had a net income, before income taxes, of $98,095,787.00 and that it had net income after taxes of $53,384,787.00. Arkla has consistently disclosed and estimated its maximum liability for compensatory damages in the instant Louisiana breach of contract case at "not more than $3,500,000.00". Moreover, Arkla has consistently represented and maintained "that a complete loss of the suit would not materially affect the company or its prospects".

and corporate profits, as wrongfully obtained at Respondents' loss, damage, detriment and expense from 1961 through 1975, asserted that:

(1) The United States district court for the western district of Louisiana, the Federal Power Commission and the Federal Energy Regulatory Commission have consistently erred in remanding and deferring the breach of contract and damage dispute between Respondents and Arkla to the jurisdiction of the Louisiana state courts for resolution and adjudication *and*, conversely, the Louisiana courts have erred in failing to defer the breach of contract and damage dispute between Respondents and Arkla to the primary and exclusive jurisdiction of the Federal Power Commission and Federal Energy Regulatory Commission; and

(2) Even if the Louisiana courts had the jurisdiction to interpret the "favored nations" clause as contained in the 1952 gas sales contract in order to determine and establish the true *intent* of the parties when they perfected said contract on January 11, 1952, the Louisiana courts erred in their application of ordinary rules of contract law to the evidence adduced at the trial of this case on its merits in determining the true intent of the parties.

Arkla, in its second petition for a writ of certiorari as filed with this Court on May 29, 1979, Docket No. 78-1789, has again diffusely reargued its first two specifications of error and has added a third complaint with respect to the "quantum of damages issue" as resolved and adjudicated by the Louisiana Supreme Court by asserting that:

(3) Even if the Louisiana courts had jurisdiction over the instant breach of contract and damage case and even if the Louisiana courts

properly interpreted the "favored nations" clause and correctly determined the true *intent* of the parties in light of the actual evidence, the award of compensatory damages as made by the Louisiana courts was excessive with respect to the actual losses attributable to Respondents' residue natural gas from September, 1961 through September, 1972 due to the fact that Arkla wrongfully and effectively obstructed, prevented and precluded Respondents from timely and prospectively filing notices of their contractually authorized price increases for their residue gas, which were *below* the F.P.C.'s maximum and lawful area rate ceilings, with the Federal Power Commission under section 4(d) of the Natural Gas Act from September, 1961 through September, 1972.

II.

STATEMENT OF THE CASE

On January 11, 1952 the Respondents herein, as royalty interest owners, working interest owners and overriding royalty interest owners, entered into a private gas sales contract with the wrongdoer in this case, Arkla. Under the 1952 contract and the related division order contracts Arkla agreed to purchase at severable prices Respondents' residue natural gas *and* their extracted liquid hydrocarbons, gasoline, condensate and plant products. These contracts covered all of Respondents' residue royalty gas, residue working interest gas *and* their extracted liquid hydrocarbons, condensate, gasoline and plant products as produced from various wells in the Sligo gas field, Bossier Parish, Louisiana.

The 1952 contract contained a broad "favored nations" clause under which Arkla, as Respondents' obligor, contractually agreed and solemnly bound itself

to at all times thereafter pay Respondents the highest prices that Arkla subsequently paid to anyone else for any gas produced from any well or wells in the Sligo gas field, Bossier Parish, Louisiana under any agreement, written or verbal. Specifically, Respondents, as royalty owners and working interest owners, from September, 1961 through April, 1974 repeatedly inquired of Arkla as to whether Arkla had in fact paid anyone else in the Sligo gas field higher prices than those as paid by Arkla for Respondents' residue natural gas *and* Respondents' extracted liquid hydrocarbons, gasoline and plant products. During this fourteen year period Arkla repeatedly, but erroneously and falsely, advised and informed Respondents that they were receiving for their royalty and working interest residue gas, as well as their extracted liquid hydrocarbons, gasoline and plant products, the highest prices that Arkla was paying to anyone else in the Sligo gas field.

Respondents in good faith believed and to their legal detriment relied upon Arkla's false representations from 1961 until January, 1974 when one of the Respondents inadvertently overheard a casual conversation and "rumor" to the effect that Arkla under a contractual agreement with the United States Government had been and was paying substantially higher prices for the United States government's share of the residue royalty gas *and* extracted liquid hydrocarbons, gasoline and plant products from the same Sligo field and delivered into Arkla's same Sligo pipeline system. From January, 1974 through April, 1974, Respondents repeatedly attempted without success to obtain the true facts from Arkla and the United States Government. Arkla for obvious and self-serving reasons and the United States Department of the

Interior, for inexplicable reasons, both refused to voluntarily disclose the true facts concerning the actual prices that the United States Government had received and was receiving from Arkla for its share of the residue royalty gas *and* extracted liquid hydrocarbons, gasoline and plant products as produced fromthe same Sligo gas field and delivered into Arkla's same Sligo pipeline system.

After Respondents were forced to retain their undersigned counsel, Respondents pursuant to the "*Freedom of Information Act*" for the first time on June 26, 1974 discovered that they had in fact been repeatedly misinformed and continuously misled by Arkla since September, 1961 with respect to the highest prices that Arkla had in fact been paying for residue natural gas *and* extracted liquid hydrocarbons, gasoline and plant products as produced from the same Sligo gas field and delivered into Arkla's same Sligo pipeline system. Specifically, Respondents' undersigned counsel pursuant to the "*Freedom of Information Act*" on June 26, 1974 received a letter dated June 25, 1974 from the United States Department of the Interior that in pertinent part truthfully advised that:

> "The Geological Survey made a determination, by letter dated March 27, 1962, that the following prices would be required for the Government's royalty gas: $0.117432 per MCF until January 1, 1962; $0.130252 until January 1, 1967; and $0.140508 thereafter, all at 15.025 p.s.i.a. Arkansas Louisiana Gas Company, in view of the Government's right under the lease contract to determine the value of its royalty gas, but without conceding that the prices represented market value in the Sligo field, acceded to the price determination made by this office.

> Effective May 1, 1974, this office made a new determination that the price for the Government's royalty gas taken by Arkansas Louisiana Gas Company would be $0.26 per MCF . . .
>
> The United States Government has not, during the existence of the captioned Oil, Gas and Mineral Lease, elected to take a portion of the gas produced in kind, rather than sell its portion to various parties."

After Respondents received the June 25, 1974 letter from the United States government on June 26, 1974, Respondents made an amicable demand upon Arkla for a full disclosure of *all* of the true, relevant and material facts concerning its contractual agreements with the United States Government and its actual payments of higher prices for the United States Government's share of the residue natural gas and extracted liquid hydrocarbons, gasoline and plant products as produced from wells in the same Sligo gas field and delivered into Arkla's same Sligo pipeline system since September, 1961. Arkla, as Respondents' contractual obligor, completely refused to disclose the true facts and arrogantly forced Respondents to file a lawsuit in order to judicially discover and judicially extract all of the true, relevant and material facts from Arkla's *own* files and records.

On July 18, 1974 the fifteen individual Respondents herein filed an action for damages for breach of contract against Arkla in a Louisiana State district court in order to: (i) judicially discover and obtain all of the true, relevant and material facts concerning Arkla's continued breach of contract since September, 1961; (ii) judicially prove and confirm the validity of the true facts and, hence, their contractual rights; and (iii)

judicially recover adequate and proper compensation from Arkla for the actual losses and damages caused and incurred by virtue of Arkla's continued breach of contract and Arkla's effective withholding and concealment of all of the true, relevant and material facts concerning its continued breach of contract from Respondents since September, 1961 with respect to their severable and contractually authorized prices for both their extracted liquid hydrocarbons, gasoline and plant products *and* their residue natural gas. This litigation was finally and definitively concluded in the Louisiana courts on May 17, 1979.

After five years of extended, burdensome and protracted litigation, the Louisiana courts definitively established and confirmed that Arkla wrongfully injured and damaged the fifteen individual Respondents herein from 1961 through 1975 by continuously breaching and violating Respondents' private legal and contractual rights under the 1952 private gas sales contract in the same wrongful manner that other fair and impartial courts have also consistently found that Cities Service Gas Company, Gulf Oil Corporation, Kerr-McGee Corporation and Louisiana-Nevada Transit Company, as self-serving obligors, wrongfully injured and damaged other innocent, injured and aggrieved contractual obligees by wrongfully breaching and violating similar private gas sales contracts. See: *Western Natural Gas Co.* v. *Cities Service Gas Co.*, 507 Pac.2d 1236 (Okla. 1972), *appeal dismissed* and *certiorari denied*, 409 U.S. 1052 (1972); *Cities Service Gas Co.* v. *F.P.C.*, 535 F.2d 1278 (D.C. Cir. 1976); *Gulf Oil Corp.* v. *American Louisiana Pipeline Co.*, 282 F.2d 401 (6th Cir. 1960); *Eastern Petroleum Co.* v. *Kerr-McGee Corp.*, 447 F.2d 569 (7th Cir. 1971); and *Louisiana-Nevada Transit Co.* v. *Woods*, 393 F. Supp. 177 (W.D. Ark. 1975).

In light of the overwhelming evidence in this case and, specifically, the F.P.C.'s November 8, 1976 clarifying "Order" (Exhibit D-59), the Louisiana courts have now awarded the fifteen injured and damaged Respondents herein compensatory damages for the actual losses and damages which they have without question sustained and incurred with respect to both their extracted liquid hydrocarbons, gasoline and plant products *and* their residue natural gas from 1961 through 1975 due to Arkla's continued breach of contract and Arkla's effective concealment of all of the true, relevant and material facts from Respondents from 1961 through 1975. The Louisiana courts' award of compensatory damages under the facts of this case does nothing more than to compensate Respondents for their actual losses and to place Respondents in the same or as good a position that they *would* and *could* have lawfully been in *had* Arkla timely and cooperatively honored the contract and prospectively done everything necessary to fully implement and fulfill Respondents' private legal and contractual "favored nations" rights in a manner fully consistent with the true *intent* of the contract and all applicable laws, rules and regulations from 1961 through 1975.

Under the facts and circumstances of this case *and* well established rules and fundamental principles of law, equity and justice, the Louisiana courts' award of compensatory damages in this case is right, just and proper and is fully consistent with the *justice* as consistently afforded by other fair and impartial courts to other similarly injured, damaged and aggrieved parties for actual losses and damages sustained and incurred due to the breach and violation of similar private gas sales contracts.

As Respondents will hereinafter demonstrate, it has now been conclusively confirmed by the Louisiana courts below, the F.P.C. and the F.E.R.C. that Respondents' recovery of compensatory damages for all of their actual losses and damages with respect to both their extracted liquid hydrocarbons, gasoline and plant products *and* their residue natural gas from 1961 through 1975 will *not* adversely affect the "relevant public interest" against *excessive prices* for residue natural gas as sold in interstate commerce from 1961 through 1975.

III.

ARKLA'S COMPLAINT WITH RESPECT TO THE JURISDICTIONAL DETERMINATIONS IN THIS CASE.

In a variety of cases this Court has consistently emphasized and confirmed the fundamental principle that in our complex society courts and agencies "are to be collaborative instrumentalities of justice" and that "justice" under our American legal system will not suffer a legal wrong or injury to be without a meaningful remedy. See: *United States* v. *Morgan*, 313 U.S. 409 (1941); *Palmer* v. *Massachusetts*, 308 U.S. 79 (1939); *Texas and Pacific R. Co.* v. *Rigsby*, 241 U.S. 33 (1916); *Smith* v. *Hoboken R. W. & S. S. C. Co.*, 328 U.S. 123 (1946); *Thompson* v. *Texas Mexican R. Co.*, 328 U.S. 134 (1946); *United States Alkali Asso.* v. *United States*, 325 U.S. 196 (1945); and *Atlantic Coast Line R. Co.* v. *Florida*, 295 U.S. 301 (1935).

Specifically, in connection with the "integrity" of private contractual rights and traditional common-law contract claims for the recovery of compensatory

damages arising out of the breach and violation of private gas sales contracts, this Court has consistently held and confirmed that:

(A) *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667 (1950):

> "If Phillips sought damages from petitioner or specific performance of their contracts, it could not bring suit in a United States District Court on the theory that it was asserting a federal right. And for the simple reason that such a suit would 'arise' under the State law governing the contracts."

(B) *United Gas Pipe Line Co.* v. *Mobile Gas Corp.*, 350 U.S. 332 (1956):

> "The Natural Gas Act, on the other hand, recognizes the need for private contracts of varying terms and expressly provides for the filing of such contracts as a part of the rate schedules.
>
> The Act thus affords a reasonable accommodation between the conflicting interests of contract stability on the one hand and public regulation on the other . . .
>
> By preserving the integrity of contracts, it permits the stability of supply arrangements which all agree is essential to the health of the natural gas industry . . ."

(C) *Pan American Petroleum Corp.* v. *Superior Court*, 366 U.S. 656 (1961):

> "Suit was brought in a state court on a common-law contract claim . . .
>
> The rights as asserted by Cities Service are traditional common-law claims. They do not lose their character because it is common

> knowledge that there exists a scheme of federal regulation of interstate transmission of natural gas . . .
>
> We hold that the state courts of Delaware do have jurisdiction to hear and decide the claims that Cities Service has formulated. Affirmed."

Accordingly, numerous other courts of this Nation and the F.P.C. have also consistently recognized and held that "*traditional common-law contract rights*" arising out of the breach and violation of private gas sales contracts "*do not lose their character because it is common knowledge that there exists a scheme of federal regulation of interstate transmission of natural gas*" under the Natural Gas Act as enacted by Congress in 1938 and that the courts may properly resolve and adjudicate such "*traditional common-law contract claims*". See: *Western Natural Gas Co.* v. *Cities Service Gas Co.*, 507 Pac.2d 1236 (Okla. 1972), *appeal dismissed* and *certiorari denied*, 409 U.S. 1052 (1972); *Cities Service Gas Co.* v. *F.P.C.*, 535 F.2d 1278 (D.C. Cir. 1976); *Gulf Oil Corp.* v. *American Louisiana Pipeline Co.*, 282 F.2d 401 (6th Cir. 1960); *Pan American Petroleum Corp.* v. *Kansas-Nebraska Natural Gas Co.*, 297 F.2d 561, 566 (8th Cir. 1962); *State of Louisiana* v. *F.P.C.* 503 F.2d 844 (5th Cir. 1974); *Skelly Oil Co.* v. *F.P.C.* 532 F.2d 177 (10th Cir. 1976); *Monsanto Co.* v. *F.P.C.*, 463 F.2d 799 (D.C. Cir. 1972) *International Paper Co.* v. *F.P.C.*, 476 F.2d 121 (5th Cir. 1973); *City of New Orleans, La.* v. *United Gas Pipe Line Co.*, 390 F.Supp. 861 (E.D.La. 1974); and *Rowan* v. *Allied Chemical Corp.*, 39 F.P.C. 64 (1968).

In light of these applicable and controlling decisions on point, the Louisiana state district court, the

Louisiana court of appeal, the Louisiana Supreme Court, the United States district court for the western district of Louisiana, the Federal Power Commission and the Federal Energy Regulatory Commission have unanimously and correctly determined that the Louisiana courts had the jurisdiction and authority to resolve and adjudicate the instant breach of contract and damage dispute between Respondents and Arkla.

Arkla, in its petitions to this Court, has very conveniently failed to mention that, in light of the above cited applicable and controlling cases, Arkla itself invoked the original jurisdiction of the Louisiana state courts over the instant breach of contract and damage case by virtue of its "Petition-In-Reconvention For a Declaratory Judgment" and its "Motion for Separate Trials For The Breach of Contract and Quantum of Damages Issues". Arkla, after having vigorously tried and lost on the merits of all of the factual and contractual issues presented in this case, simply wants an "encore" in still another forum. Obviously, Arkla has had its days in court with respect to the merits of this case and had Arkla prevailed in the Louisiana state courts on the merits of its theories, allegations and demands as set forth in its "Petition-in-Reconvention For A Declaratory Judgment", Arkla would not be presently attacking the numerous and consistent jurisdictional determinations as previously and correctly made by the six tribunals in connection with this case.

In that Arkla's belated complaint with respect to these jurisdictional decisions is contrary to the applicable and controlling decisions of this Court, numerous other courts and the F.P.C. itself, it was properly rejected and discredited by all of the Louisiana courts

below, the United States district court for the western district of Louisiana, the Federal Power Commission and the Federal Energy Regulatory Commission in connection with the instant breach of contract and damage dispute between Respondents and Arkla.

IV.

ARKLA'S COMPLAINT WITH RESPECT TO THE LOUISIANA COURTS' INTERPRETATION OF THE 1952 CONTRACT AND RESOLUTION OF THE BREACH OF CONTRACT AND LIABILITY ISSUE IN THIS CASE.

Arkla, in complaining about the Louisiana courts' interpretation of the "favored nations" clause as contained in the 1952 contract based upon the true *intent* of the parties when they perfected the contract on January 11, 1952 and, thus, their unanimous resolution and adjudication of the breach of contract and liability issue adversely to Arkla, completely disregards ordinary rules and principles of contract law and the duties of courts in interpreting contracts to reflect the true *intent* of the parties who confect any specific contract. Moreover, Arkla in this proceeding has studiously avoided discussing the overwhelming *evidence* relating to the true *intent* of the parties in this case and its *own* contractual agreements with the United States Government[8] under which Arkla in its dual capacity as a pipeline purchaser and the owner of a pipeline system in the Sligo gas field "purchased", "acquired" and "paid for" the United States

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[8] See: Section 2(n) of Arkla's 1961 Protective Lease Contract with the United States Government *and* Arkla's November 15, 1962 letter contract with the United States Government.

Government's share of the residue royalty gas *and extracted liquid hydrocarbons, gasoline and plant products as produced from the same Sligo gas field and delivered into Arkla's same Sligo pipeline system from 1961 through 1975 at "prices" substantially higher than Arkla "paid for" Respondents' share of the residue royalty gas, working interest gas and* extracted liquid hydrocarbons, gasoline and plant products as produced from the same Sligo gas field and delivered into Arkla's same Sligo pipeline system from 1961 through 1975; i.e. the relevant *evidence* upon which the Louisiana courts properly based their resolution of the breach of contract and liability issue in this case.

Further, Arkla for obvious reasons has completely ignored and disregarded in this proceeding and in No. 78-986 the precise factual findings and legal conclusions of the Louisiana courts in determining the true *intent* of the parties to the 1952 contract based upon actual *evidence* adduced at the trial of this case on its merits.

The Louisiana courts' unanimous resolution and adjudication of the breach of contract and liability issue by applying well established principles of ordinary contract law to the *evidence* relating to the true *intent* of the parties is wholly consistent with the just and proper decisions as rendered by the fair and impartial courts under similar circumstances in *Eastern Petroleum Co., et al* v. *Kerr-McGee Corp.*, 447 F.2d 569 (7th Cir. 1971). Further, the F.E.R.C. in its May 18, 1979 "Order Declining Jurisdiction" after reviewing the judgments of the Louisiana courts in the

breach of contract and damage case correctly concluded and confirmed that:

> "The Louisiana court properly looked to the intentions of the parties to the contract in determining the meaning of the contract."

Moreover, the F.E.R.C., after thoroughly reviewing the judgments of the Louisiana courts and specifically their determination of the true *intent* of the parties under the "favored nations" clause, concluded that the judgments did *not* "adversely affect its regulatory responsibility" under the Natural Gas Act to protect the "relevant public interest" against *excessive prices* for residue natural gas as sold in interstate commerce from 1961 through 1975. Indeed the Commission's applicable and maximum area rate ceilings for Respondents' residue natural gas as sold in interstate commerce fully protect the "relevant public interest", especially under the circumstances of this case where Respondents' contractually authorized and severable prices for their residue natural gas, which Respondents did not receive due to Arkla's continued breach of contract and effective concealment of the true facts from 1961 through 1975, were consistently *below* the Commission's applicable and lawful area rate ceilings from 1961 through 1975. Clearly, a judicial determination of the true *intent* of the parties who on January 11, 1952 perfected the subject contract and contractually agreed to be bound by the "favored nations" clause as contained therein as based upon the *evidence* in this case did *not* present or involve any real or substantial federal question that should have been deferred to the primary and exclusive jurisdiction of the F.P.C. and F.E.R.C.

V.

ARKLA'S COMPLAINT WITH RESPECT TO THE QUANTUM OF COMPENSATORY DAMAGES AS AWARDED RESPONDENTS BY THE LOUISIANA COURTS FOR THE ACTUAL LOSSES CAUSED BY ITS CONTINUED BREACH OF CONTRACT FROM 1961 THROUGH 1975.

Without question or dispute, Arkla, as Respondents' contractual obligor under the "favored nations" clause as contained in the 1952 private gas sales contract, had under well established Louisiana state contract law[9] a continuing contractual obligation and an affirmative legal duty to timely *cooperate* with Respondents and to prospectively do everything necessary, both expressly and impliedly necessary, to insure that Respondents received the legal fruits and contractual benefits of their "favored nations" rights in a manner fully consistent with the true *intent* of

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[9] Articles 1901, 1903 and 1930 of the Louisiana Civil Code:

"*Art. 1901.* Agreements legally entered into have the effect of laws on those who have formed them.
They can not be revoked, unless by mutual consent of the parties, or for causes ecknowledged by law.
They must be performed with good faith.

Art. 1903. The obligation of contracts extends not only to what is expressly stipulated, but also to everything that, by law, equity or custom, is considered as incidental to the particular contract, or necessary to carry it into effect.

Art. 1930. The oblitations of contract [contracts] extending to whatsoever is incident to such contracts, the party who violated them, is liable, as one of the incidents of his obligations, to the payment of the damages, which the other party has sustained by his default."

the contract and all applicable laws, rules and regulations from 1961 through 1975. After five years of extended, burdensome and protracted litigation, it has now been definitively established and confirmed that Arkla wrongfully injured and damaged the fifteen individual Respondents herein from 1961 through 1975 by continuously breaching and violating Respondents' private legal and contractual rights under the 1952 private gas sales contract and applicable Louisiana state contract law in the same wrongful manner that other fair and impartial courts have also consistently found that Cities Service Gas Company, Gulf Oil Corporation, Kerr-McGee Corporation and Louisiana-Nevada Transit Company for their own corporate and self-serving purposes also wrongfully injured and damaged other innocent, injured and aggrieved contractual obligees by wrongfully breaching and violating similar private gas sales contracts and applicable state contract law. See: *Western Natural Gas Co.* v. *Cities Service Gas Co.*, 507 Pac.2d 1236 (Okla. 1972), *appeal dismissed* and *certiorari denied*, 409 U.S. 1052 (1972); *Cities Service Gas Co.* v. *F.P.C.*, 535 F.2d 1278 (D.C. Cir. 1976); *Gulf Oil Corp.* v. *American Louisiana Pipeline Co.*, 282 F.2d 401 (6th Cir. 1960); *Eastern Petroleum Co.* v. *Kerr-McGee Corp.*, 447 F.2d 569 (7th Cir. 1971); and *Louisiana-Nevada Transit Co.* v. *Woods*, 393 F.Supp. 177 (W.D. Ark. 1975).

The substantive law relative to a proper measure and award of compensatory damages for the actual losses and damages sustained and incurred by Respondents due to Arkla's continued breach of contract and effective concealment of all of the true, relevant and material facts from Respondents from 1961

through 1975 is well settled. This Court in *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405 (1975), recently confirmed that:

> "And where a legal injury is of an economic character,
>
> > '[t]he general rule is, that when a wrong has been done, and the law gives a remedy, the compensation shall be equal to the injury. The latter is the standard by which the former is to be measured. The injured party is to be placed, as near as may be, in the situation he would have occupied if the wrong had not been commited.' *Wicker* v. *Hoppock, 6 Wall 94, 99, 18 L Ed 752 (1867).*' "

See, also: *Meltzer* v. *Roof Coatings, Inc.* 536 F.2d 663 (5th Cir. 1976); *Nat Harrison Associates, Inc.* v. *Gulf States Utilities,* 491 F.2d 578, rehearing denied 493 F.2d 1405 (5th Cir. 1974); *Fogel* v. *Feazel,* 10 So.2d 695 (La.S.Ct. 1942); *Friedman Iron & Supply Co.* v. *J. B. Beaird Co.,* 63 So.2d 144 (La.S.Ct. 1953); *Corpus Juris Secundum,* Vol. 25 Damages, §74, p. 843; *Corbin on Contracts,* §§1029 and 1088; *Restatement of the Law of Contracts,* §329, *McCormick on Damages,* §137, p. 560; and *3 Williston on Sales,* §599, p. 293.

This same well established rule and principle of substantive law relative to the proper measure and award of compensatory damages due for actual losses caused by the breach and violation of private contractual rights has also been consistently applied to other breach of contract and damage cases involving private gas sales contracts. See: *Western Natural Gas Co.* v. *Cities Service Gas Co.,* 507 Pac.2d 1236 (Okla. 1972), *appeal dismissed* and *certiorari denied,* 409 U.S. 1052 (1972); *Cities Service Gas Co.* v. *F.P.C.,* 535 F.2d 1278 (D.C. Cir. 1976); *Eastern Petroleum Co.* v.

Kerr-McGee Corp., 447 F.2d 569 (7th Cir. 1971); and *Louisiana-Nevada Transit Co.* v. *Dalton J. Woods*, 393 F.Supp. 177 (W.D. Ark. 1975).

The F.P.C., as "a collaborative instrumentality of justice" in the related proceeding of "*Arkansas Louisiana Gas Company* v. *Frank J. Hall, et al*, Docket No. RI76-28, Federal Power Commission", on November 8, 1976 issued a clarifying "Order" which expressly set forth the facts and legal parameters necessary for the proper assessment and computation of the actual losses and damages which Arkla wrongfully caused Respondents to sustain and incur from 1961 through 1975 with respect to both their extracted liquid hydrocarbons, gasoline and plant products *and* their residue natural gas as delivered and sold to Arkla from 1961 through 1975. In again deferring the instant breach of contract and damage dispute between Respondents and Arkla to the Louisiana state courts, the F.P.C. in its November 8, 1976 clarifying "Order" (Exhibit D-59) expressly clarified and confirmed what Respondents *would* and *could* have lawfully received and obtained, if contractually and severably authorized, for their residue natural gas *and* their extracted liquid hydrocarbons, gasoline and plant products as sold to Arkla from 1961 through 1975, *had* Arkla *not* continuously breached and violated their private legal and contractual rights and *had* Arkla *not* effectively obstructed, prevented and precluded Respondents from timely implementing and effectuating their private legal and contractual rights in a manner consistent with the true *intent* of the contract and all applicable laws, rules and regulations from 1961 through 1975. Specifically, the

F.P.C. in its November 8, 1976 "Order" correctly and properly clarified and confirmed that:

> "Respondents request amplification of the Commission's order issued June 4, 1976, in regard to the maximum rates, for each year beginning in the fall of 1961 through the year 1972 which, if contractually authorized and if proper filing procedures had been followed, would have been approved by the Commission pursuant to its '*Other Southwest Area Rate*' Opinion Nos. 607 and 607-A. The respective area base rate ceilings for sales of natural gas under Opinion Nos. 607 and 607-A from Northern Louisiana by a producer with contractual authority who properly filed are:

Prior to January 1, 1965	From January 1,1965 Thru September 30, 1968	From October 1, 1968 thru 1972
16.7¢ per Mcf at 15.025 psia	18.6¢ per Mcf at 15.025 psia	20.6¢ per Mcf at 15.025 psia

> Where, as here, the sale contract provides for the sale of natural gas as the wellhead, the ceilings set forth above for such sale are subject to a 1.0¢ per Mcf downward adjustment for wellhead delivery.
>
> Respondents also request that the Commission set forth and state:
>
> 'I. That the Federal Power Commission pursuant to the Natural Gas Act, has not, since September, 1961 to the present date, regulated, limited or restricted the rates or prices which the respondents herein, if contractually authorized, could and should have been paid for their liquid hydrocarbons, gasoline, and plant products extracted from the wet or casinghead gas and which were sold to Arkansas Louisiana Gas Company pursuant to the January 11, 1952

> 'Most Favored Nation' contract and the related Arkansas Louisiana Gas Company division order contracts.'
>
> While the Commission has jurisdiction over natural gas containing *liquefiable* hydrocarbons, it has no jurisdiction over liquids after their removal from the gas stream. Consequently, if a contract provides for severable payments for the natural gas, including the liquefiable hydrocarbons contained therein, and the subsequently removed liquids, we would have jurisdiction over the sale of the natural gas containing the liquefiable hydrocarbons, but no jurisdiction over the sale of the liquids. But, there is a basic contract question presented with respect to the subject sale as to whether respondents are entitled under their sales contract to a price for the products removed by ARKLA from the natural gas purchased from respondents which is severable from the price for natural gas sold under such contract. Since, as we indicated in our order issued March 8, 1976, herein, it is appropriate for a court to resolve contract questions pertaining to the sale of natural gas, it is clear that a court would also have jursidiction to decide this contractual issue. . .
>
> The Commission's Order Denying Application for Rehearing issued June 4, 1976, in the above-entitled docket number, is hereby clarified and amplified as set forth in the body of this order."

Arkla, based upon the data and information as contained in its *own* files and records, has repeatedly represented, estimated and conceded that, if Respondents prevailed upon the breach of contract and liability issue in this case, Respondents' recovery of compensatory damages with respect to the actual losses and damages attributable to both their extracted liquid hydrocarbons, gasoline and plant products *and*

their residue natural gas from 1961 through 1975 should be not more than *"a maximum of $3,500,000.00"*. Respondents in connection with the data and information as judicially discovered and extracted from Arkla's *own* files and records and the F.P.C.'s November 8, 1976 clarifying "Order" have consistently computed their actual losses and damages attributable to both their extracted liquid hydrocarbons, gasoline and plant products *and* their residue natural gas from 1961 through 1975 at a minimum of $2,809,199.08.

The Louisiana Supreme Court in resolving and adjudicating the "quantum of damages issue" in this case properly took judicial notice of and adhered to the F.P.C.'s November 8, 1976 clarifying "Order" and the Commission's lawful area rate ceilings in measuring and awarding Respondents compensatory damages for the actual losses caused and incurred due to Arkla's continued breach of contract and wrongful witholding and effective concealment of all of the true facts from Respondents from 1961 through 1975. Specifically, the Louisiana Supreme Court in its March 5, 1979 judgment held and concluded that:

> "At trial, a November 8, 1976 order of the Commission was produced which indicated the maximum rates to which plaintiffs would have been entitled if contractually authorized and if proper filing procedures had been followed (Exhibit D-59). The Commission clearly indicated in its order that it would have approved such rates. . . It appears reasonably certain that the amount of damages claimed by plaintiffs rests upon a certain basis.[7]

Footnote 7: We note that plaintiffs make no claim that they would have been entitled to a price increase under their contract in excess of the respective area base rate ceilings for sales of natural gas as established by order of the Commission."

The Louisiana state district court, on remand from the Louisiana Supreme Court and in light of: (i) the F.P.C.'s November 8, 1976 clarifying "Order" (Exhibit D-59); (ii) the March 5, 1979 judgment of the Louisiana Supreme Court; (iii) substantive contract law; and (iv) the "quantum of damages" evidence in this case, on May 17, 1979 awarded the fifteen Respondents herein compensatory damages in the aggregate sum of $2,738,888.40 for all of the actual losses attributable to both their extracted liquid hydrocarbons, gasoline and plant products *and* their residue natural gas from 1961 through 1975. While the Louisiana state district court did *not* allocate its award of compensatory damages between the actual losses attributable to Respondents' extracted liquid hydrocarbons and plant products from 1961 through 1975 as opposed to the actual losses attributable to Respondents' residue natural gas from 1961 through 1975, the evidence in the case supports and confirms that approximately 45% of the compensatory damages are attributable to the actual losses with respect to Respondents' extracted liquids, gasoline and plant products *and* 55% of the compensatory damages are attributable to the actual losses with respect to Respondents' residue natural gas.

Arkla in this proceeding *cannot* contest or dispute the fact that Respondents actually lost at least $2,738,888.40 up to "*a maximum of $3,500,000.00*" due to its continued breach of contract and effective concealment of all of the true facts from Respondents from 1961 through 1975. Arkla's bottom line complaint with respect to the Louisiana courts' award of compensatory damages in this case is that Arkla should *not* be required to respond in compensatory

damages for that portion of Respondents' actual losses and damages attributable to their residue natural gas from September, 1961 through September, 1972. Arkla's legal theory of a partial unjust enrichment at Respondents' loss, damage, detriment and expense is entirely based and predicated upon the unconscionable fact that Arkla wrongfully prevented and absolutely precluded Respondents from timely preparing and prospectively filing routine notices setting forth their contractual entitlement to higher prices for their residue natural gas with the F.P.C. under section 4(d) of the Natural Gas Act from September, 1961 through September, 1972. In that Arkla's last alternative defense, even in theory, only relates to Respondents' legal entitlement to a recovery of compensatory damages for the actual losses and damages attributable to Respondents' residue natural gas from 1961 to 1972 and does not, even in theory, relate to Respondents' recovery of compensatory damages for the actual losses and damages attributable to Respondents' extracted liquid hydrocarbons and plant products from 1961 through 1975 or Respondents' actual losses and damages attributable to Respondents' residue natural gas from October, 1972 through December, 1975, all further discussion in this section will deal solely with Respondents' legal right to recovery compensatory damages for the actual losses and damages attributable to their residue natural gas from September, 1961 through September, 1972 (the period prior to the time Respondents became administratively classified as "small producers").

Clearly, the true purpose of section 4(d) of the Natural Gas Act was from 1961 to 1972 to assist the Commission in protecting the "relevant public interest" against Respondents' obtaining *excessive prices*

for their residue natural gas as sold to Arkla in interstate commerce from September, 1961 through September, 1972. Obviously, section 4(d) was predicated on the assumption that Arkla would timely honor its contractual obligations to Respondents from 1961 to 1972 and that Arkla would timely *cooperate* with Respondents in prospectively making any necessary filings with the Commission with regard to their contractual entitlement to higher prices for their residue natural gas, which contractually authorized prices were substantially *below* the Commission's applicable, maximum, lawful, just and reasonable area rate ceilings, and *would*, therefore, have been automatically approved by the Commission, as confirmed in the F.P.C.'s November 8, 1976 clarifying "Order" (Exhibit D-59). Certainly, section 4(d) was never designed or intended to be improperly used as a *tool* or a *shield* by Arkla or any other pipeline company for the purpose of their own unjust enrichment and for unilaterally evading and escaping their legitimate contractual duties and obligations.

While section 4(d) does *not* anticipate or address the situation presented here, the F.P.C. in its November 8, 1976 clarifying "Order" (Exhibit D-59) properly clarified and correctly confirmed what *would* and *could* have lawfully happened *had* Arkla *not* breached and violated Respondents' contractual rights from 1961 through 1975 and *had* Arkla *not* wrongfully prevented and precluded Respondents from timely and prospectively filing notices setting forth the increased prices which Respondents were contractually entitled to receive for their residue natural gas from September, 1961 through September, 1972 with the Commission from September, 1961 through September, 1972.

In light of the F.P.C.'s November 8, 1976 clarifying "Order" (Exhibit D-59), it is an undeniable fact that Respondents "*would*" and "*could*" have lawfully obtained and received their contractually authorized prices for their residue natural gas as sold to Arkla from 1961 to 1972, which were *below* the Commission's established and approved lawful area rate ceilings, *had* Arkla *not* breached the contract for fourteen years and effectively concealed all of the true facts from Respondents for fourteen years. Again, as confirmed by the F.P.C. in connection with this specific breach of contract and damage case:

> "The respective area base rate ceilings for sales of natural gas under Opinion Nos. 607 and 607-A from Northern Louisiana by a producer with contractual authority who properly filed are:

Prior to January, 1965	From January 1, 1965 Thru September 30, 1968	From October 1, 1968 thru 1972
16.7¢ per Mcf at 15.025 pisa	18.6¢ per Mcf at 15.025 psia	20.6¢ per Mcf at 15.025 psia

> Where, as here, the sale contract provides for the sale of natural gas at the wellhead, the ceilings set forth above for such sale are subject to a 1.0¢ per Mcf downward adjustment for wellhead delivery."

As now unanimously and definitively established by *all* of the courts below after five years of litigation, Respondents were from 1961 to 1972 contractually entitled to receive from Arkla the same prices for their

residue natural gas that the United States Government received from Arkla for its residue natural gas as delivered and sold to Arkla, to wit:

Sept. 1961 thru Dec. 1961	Jan. 1962 thru Dec. 1966	Jan. 1967 thru Sept. 1972
$0.117432 per Mcf at 15.025 pisa	$0.130252 per Mcf at 15.025 psia	$0.140508 per Mcf at 15.025 psia

As confirmed by the evidence herein, Respondents, due to Arkla's continued breach of contract and effective withholding and concealment of all of the true, relevant and material facts from Respondents for fourteen years, received the following prices for their residue natural gas as delivered and sold to Arkla from 1961 to 1972, to wit:

Sept. 1961 thru Dec. 1961	Jan. 1962 thru Dec. 1966	Jan. 1967 thru Sept. 1972
$0.08547 per Mcf at 15.025 pisa	$0.09446 per Mcf at 15.025 psia	$0.10346 per Mcf at 15.025 psia

Therefore, in light of the F.P.C.'s November 8, 1976 clarifying "order" (Exhibit D-59) and the evidence in this case, it follows a fortiori that Respondents wrongfully sustained and incurred substantial losses and damages with respect to their residue natural gas from 1961 to 1972 due to the fact that Arkla by virtue of its own continued breach of contract and wrongful concealment of the true facts from Respondents for fourteen years effectively prevented and absolutely precluded Respondents from prospectively making routine notice filings with the Commission from 1961 to 1972.

Thus, with respect to that portion of Respondents' actual losses and damages attributable to their residue natural gas from 1961 to 1972, the question as presented to the Louisiana Supreme Court below was whether Arkla as the wrongdoer could escape and evade its independent legal obligation to respond in compensatory damages for this portion of Respondents' actual losses and damages because Arkla had wrongfully made it absolutely impossible for Respondents to timely and prospectively comply with the routine filing requirements of section 4(d) of the Natural Gas Act from 1961 to 1972.

The Louisiana Supreme Court by applying the well established rules and principles of law, equity and justice as contained in Article 2040 of the Louisiana Civil Code, as consistently applied and enforced by that court in numerous other cases, held that Arkla as the wrongdoer was legally *estopped* to assert an affirmative defense to Respondents' action for damages for breach of contract based upon the unconscionable fact that Arkla had wrongfully prevented and precluded Respondnets from prospectively complying with the routine notice filing requirements of section 4(d) of the Natural Gas Act from September, 1961 through September, 1972.

In this connection the Louisiana Supreme Court expressly took note of the F.P.C.'s November 8, 1976 clarifying "Order" and the fact that Respondents' contractually authorized prices "*would*" have automatically been approved by the F.P.C. because they were *below* the Commission's maximum and lawful area rate ceilings. The decision of the Louisiana Supreme Court on this point of "*estoppel*" is

fully consistent with well established rules and fundamental principles of law, equity and justice as heretofore consistently applied and enforced by this Court and all other courts of this Nation. See, e.g., *United States* v. *Peck*. 102 U.S. 64 (1880):

> "[T]he conduct of one party to a contract which prevents the other from performing his part is an excuse for non-performance. . . It is a sound principle that he who prevents a thing being done shall not avail himself of the non-performance he has occasioned."

Numerous other examples of the affirmative application of this fundamental and unquestioned principle of law, equity and justice can be cited, see also, *e.g.*, *R. H. Stearns Co.* v. *United States*, 391 U.S. 54 (1934); *Dietrick* v. *Greaney*, 309 U.S. 190 (1940); *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975); *Story Parchment Co.* v. *Paterson P. Paper Co.*, 282 U.S. 555 (1931); *Ballard* v. *El Dorado Tire Co.*, 512 F.2d 901 (5th Cir. 1975); *Ammerman* v. *Miller*, 488 F.2d 1285 (D.C. Cir. 1973); *Perrin* v. *Rodriguez*, 153 So. 555 (La. 1934); *Ohasi* v. *Verit Industries*, 536 F.2d 849 (9th Cir. 1976); *Watson Bros. Transportation Co.* v. *Jaffa*, 143 F.2d 340 (8th Cir. 1944); *Gridiron Steel Co.* v. *Jones & Laughlin Steel Corp.*, 361 F.2d 791 (6th Cir. 1966); *Peter Kiewit Sons' Co.* v. *Summit Construction Co.*, 422 F.2d 242 (8th Cir. 1969); *Christenson* v. *Felton*, 322 F.2d 323 (9th Cir. 1963); and *George W. Garig Transfer* v. *Harris*, 75 So.2d 27 (La.S.Ct. 1954).

See also, *17A C.J.S., Contracts*, §468b (1963); *Restatement of Contracts*, §§294 and 295 (1932); and *5 S. Williston, Contracts*, §677 (3rd ed. 1961).

Contrary to Arkla's erroneous and self-serving contentions in this proceeding, these same well established rules and fundamental principles of law, equity

and justice have likewise heretofore been properly applied to cases involving the breach and violation of private gas sales contracts that covered the sale of natural gas in interstate commerce and were on file with the F.P.C. pursuant to the Natural Gas Act in order to legally "*estop*" a wrongdoer from taking advantage of innocent parties by virtue of its *own* breach of contract and legal wrongdoing. See: *Gulf Oil Corp.* v. *American Louisiana Pipe Line Co.*, 282 F.2d 401 (6th Cir. 1960); *Western Natural Gas Co.* v. *Cities Service Gas Co.*, 507 Pac.2d 1236 (Okla. 1972), *appeal dismissed* and *certiorari denied*, 409 U.S. 1052 (1972); and *Cities Service Gas Co.* v. *F.P.C.*, 535 F.2d 1278 (D.C. Cir. 1976).

Arkla's unconscionable contention that it as Respondents' contractual obligor can legally rely upon and take advantage of its *own* continued breach of contract and its *own* wrongful withholding and effective concealment on all of the true facts from Respondents for fourteen years in order to "shield" itself from its legal obligation to respond in compensatory damages for that portion of the actual losses attributable to Respondents' residue natural gas from 1961 to 1972 is contrary to very basic and fundamental principles of law, equity and justice. The Louisiana Supreme Court, in correctly recognizing Arkla's separate and independent legal obligation to respond in compensatory damages out of its own private and corporate profits for all of the actual losses and damages caused by Arkla's continued breach and violation of Respondents' private contractual rights and by applying well established rules and fundamental principles of law, equity and justice to the true facts an circumstances of the instant case, properly held that Arkla as the wrongdoer was *estopped* from asserting

this alternative defense based upon its own wrongful breach of contract and effective concealment of the true facts from Respondents for fourteen years.

Clearly, Arkla as the wrongdoer that wrongfully prevented and precluded Respondents from prospectively making the routine notice filings as required by section 4(d) from 1961 to 1972 was properly *not* permitted to take advantage of its own continued breach of contract and wrongdoing. Certainly, Arkla's continued breach of contract and wrongful concealment of all of the true facts from Respondents from 1961 to 1975 constitutes a valid legal "excuse" for Respondents having failed to prospectively file the notices with respect to their residue gas with the Commission from 1961 to 1972. Just as certainly, the fifteen individual Respondents herein should *not* to their loss, damage, detriment and expense be the victims of the fact that Arkla wrongfully rendered it absolutely impossible for them to prospectively comply with the notice filing provisions of section 4(d) of the Natural Gas Act from 1961 to 1972.

The Louisiana Supreme Court in measuring Respondents' actual losses and damages attributable to their residue natural gas from September, 1961 through September, 1972, as well as from October, 1972 through December, 1975, had to and did with the aid of the F.P.C.'s November 8, 1976 clarifying "Order" (Exhibit D-59) determine what Respondents as severably and contractually authorized *would* and *could* have lawfully received for their residue natural gas in a manner consistent with the rules and regulations of the F.P.C. (specifically the Commission's applicable and lawful area rate ceilings) *had* Arkla *not*

continuously breached the contract, effectively withheld and concealed all of the true facts from Respondents for fourteen years and wrongfully obstructed, prevented and precluded the timely performance and fulfillment of the Respondents' private contractual rights from 1961 through 1975.

Arkla's oblique contention that the Louisiana Supreme Court in relying upon the F.P.C.'s November 8, 1976 clarifying "Order" (Exhibit D-59) improperly usurped the F.P.C.'s exclusive authority to determine and fix maximum lawful area rates for the sale of natural gas in interstate commerce is a completely erroneous smoke screen and wholly without merit. Certainly, the F.P.C.'s November 8, 1976 clarifying "Order" (Exhibit D-59) constituted proper and competent evidence for the Louisiana court's use in measuring Respondents' actual losses and damages from 1961 through 1975 in the Louisiana breach of contract and damage case. Further, the Louisiana Supreme Court's taking cognizance of and reliance upon the F.P.C.'s November 8, 1976 clarifying "Order" (Exhibit D-59) correctly reflects a recognition of the "federal supremacy" of the Commission's maximum and lawful area rate ceilings for residue natural gas as sold in interstate commerce.

In that the compensatory damages as awarded the fifteen individual Respondents herein by the Louisiana courts were substantially *below* Arkla's own estimate of Respondents' recoverable damages at "*a maximum of $3,500,000.00*", clearly Arkla as the wrongdoer in this case has no real or substantial basis for complaint. Further, in light of the F.P.C.'s November 8, 1976 clarifying "Order" (Exhibit D-59) and the

F.E.R.C.'s reconfirmation of the fact that the Louisiana Supreme Court's March 5, 1979 judgment does *not* "adversely affect" the "relevant public interest" against *excessive prices* for residue natural gas sold in interstate commerce, it is clear that the Louisiana Supreme Court's March 5, 1979 judgment involves and affects only Arkla's private unjust enrichment as wrongfully obtained by Arkla from 1961 through 1975 at Respondents' loss, damage, detriment and expense.

VI.

THE SUPREME COURT OF LOUISIANA'S MARCH 5, 1979 JUDGMENT DOES FUNDAMENTAL JUSTICE TO THE INJURED AND DAMAGED RESPONDENTS HEREIN AND DOES NOT VIOLATE OR CONFLICT WITH THE REGULATORY PURPOSE OF THE NATURAL GAS ACT TO PROTECT THE RELEVANT PUBLIC INTEREST AGAINST EXCESSIVE PRICES FOR RESIDUE NATURAL GAS AS SOLD IN INTERSTATE COMMERCE.

The compensatory damages as awarded to the fifteen Respondents herein by virtue of the Louisiana Supreme Court's March 5, 1979 judgment will in accordance with well established rules and fundamental principles of law, equity and justice do nothing more than to compensate Respondents for their actual losses and to place Respondents in the same position that Respondents *would* and *could* have lawfully been in *had* Arkla *not* continuously breached the contract and wrongfully obstructed, prevented and precluded the prospective performance and fulfillment of the contract in a manner fully consistent with *all* applicable laws, rules and regulations from 1961 through 1975.

Arkla's payment of compensatory damages out of its *own* corporate profits for Respondents' actual losses and damages will constitute nothing more than a return of the private unjust enrichment that Arkla has wrongfully obtained at Respondents' loss, damage, detriment and expense from 1961 through 1975 and will clearly *not* adversely affect any "relevant public interest". Further, the Louisiana Supreme Court's holding that Arkla as the wrongdoer is *estopped* from relying upon its *own* wrongdoing and continued breach of contract for fourteen years in order to partially unjustly enrich itself at Respondents' loss, damage, detriment and expense from 1961 to 1972 is also in complete accord with well established rules and fundamental principles of law, equity and justice as repeatedly recognized, confirmed and enforced by this Court and all other courts of this Nation.

Without question or dispute the primary purpose of the Natural Gas Act is to protect the "relevant public interest" against *excessive prices* for residue natural gas as sold in interstate commerce, but that issue as conclusively determined by the United States, the F.E.R.C. and F.E.R.C.'s staff counsel is not adversely involved or affected in this case. In order to properly protect this "relevant public interest", the Commission has with respect to Respondents' residue natural gas as produced from North Louisiana and sold in interstate commerce from 1961 through 1975 previously adopted, established and approved maximum, lawful, just and reasonable area rate ceilings[10] up to which Respondents *would* and

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[10] See: "Statement of General Policy 61-1", 24 F.P.C. 818; and Other Southwest Area Rate Order Nos. 607 and 607-A, 18 C.F.R. §§154.109 and 154.109a.

could have lawfully collected as contractually authorized for their residue natural gas sold to Arkla from 1961 through 1975 *but for* Arkla's continued breach of contract and effective withholding of all of the true facts from Respondents for fourteen years. The Commission's applicable and lawful area rate ceilings are not at issue or disputed in this case and it is now conceded that Respondents' contractually authorized prices were from 1961 through 1975 *below* the Commission's applicable and lawful area rate ceilings and, hence, were not in violation of or in conflict with the "relevant public interest".

With respect to the severable and contractually authorized prices that Respondents *would* and *could* have received for their extracted liquid hydrocarbons, gasoline and plant products from 1961 through 1975 *but for* Arkla's continued breach of contract and effective withholding and concealment of all the true facts from Respondents for fourteen years, both the F.P.C., in its November 8, 1976 clarifying "Order", *and* the F.E.R.C., in its April 25, 1979 "Order" and its May 18, 1979 "Order", have in light of the applicable authorities[11] consistently confirmed that the Commission has *not* from 1961 through 1975 regulated, limited or restricted the severable prices which Respondents as contractually authorized *would* and *could* have received and collected for their extracted liquid hydrocarbons, gasoline and plant products as sold to Arkla under the 1952 contract and Arkla's

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[11] See: *Phillips Petroleum Company* v. *Texaco, Inc.*, 415 U.S. 125 (1974); *Northern Natural Gas Company* v. *Grounds*, 441 F.2d 704 (10th Cir. 1971); *Mobil Oil Corporation* v. *F.P.C.*, 483 F.2d 1238 (D.C. Cir. 1973); and *Rowan* v. *Allied Chemical Corp.*, 39 FPC 64 (1968).

related division order contracts from 1961 through 1975, *but for* Arkla's continued breach of contract for fourteen years.

After the Louisiana Supreme Court rendered its March 5, 1979 judgment, a copy of that judgment was lodged with the F.E.R.C. in the related proceeding, "*Arkansas Louisiana Gas Company* v. *Frank J. Hall, et al,* Docket No. RI76-28, Federal Energy Regulatory Commission." As evidenced by the Commission's April 25, 1979 "Order", its May 18, 1979 "Order Declining Jurisdiction", and the Commission's staff counsel's "Supplemental Memorandum Addressing Decision of Louisiana Supreme Court" dated April 16, 1979, it is clear that the F.E.R.C. and its staff counsel have thoroughly reviewed and analyzed the Louisiana Supreme Court's March 5, 1979 judgment in order to make certain that the portion of compensatory damages awarded Respondents with respect to the actual losses attributable to their residue natural gas from 1961 through 1975 were *not* measured by contractually authorized prices which *exceeded* the Commission's applicable and lawful area rate ceilings. After the F.E.R.C. thoroughly reviewed the Louisiana Supreme Court's March 5, 1979 judgment, the F.E.R.C. in its April 25, 1979 "Order" noted that:

> "To aid it in its determination of the jurisdictional questions in this case this Commission needs some additional information.

The Supreme Court of Louisiana stated in an opinion in a parallel case[1] that:

> We note that plaintiffs make no claim that they would have been entitled to a price increase under their contract in excess of the respective area base rate ceilings for sales of natural gas as established by order of the Commission.

[1] *Frank J. Hall, et al.* v. *Arkansas-Louisiana Gas Company*, No. 62,560, March 5, 1979, p. 12, n.7.

The trial court in Louisiana stated.[2]

> The evidence demonstrates that the price paid to the United States per Mcf of gas was below the maximum area rate . . .

[2] *Hall* v. *Arkansas-Louisiana Gas Company*, 1st Judicial District Court, Caddo Parish, Louisiana; No. 225,699, October 14, 1977."

This Commission is interested in the basis on which the Louisiana Courts awarded damages for gas. We want to know at what price per Mcf of gas the courts awarded damages to the Hall plaintiffs. We also want to know what damages were demanded by the plaintiffs in the Louisiana courts.

The Commission therefore orders:

(A) Hall, *et al.* to file with this Commission within ten days:

(1) A copy of the complaint filed in the Louisiana proceedings, including all amendments to that complaint;

(B) The parties to these proceedings to file with the Commission within ten days:

(1) A summary of the damages awarded by the Louisiana Courts. The summary shall show what price per Mcf of gas the Louisiana Courts

> decided that the Hall plaintiffs were entitled to broken down by time periods. We are specifically interested in damages for the gas as opposed to damages awarded for any extracted liquids. A party may wish to provide a breakdown of the total damages showing the damages per Mcf for the gas, and the damages per Mcf for the liquids. But each party must show the damages per Mcf for the gas for every time period. We also stress that we want a summary showing what the Louisiana Courts actually did rather than any attempt to relitigate the damages determined by the Louisiana Court. In its summary each party shall explain the evidentiary basis of its summary and shall include copies of the evidence it believes was actually used by the courts in determining damages; . . .

Further, after the F.E.R.C. reviewed the Louisiana Supreme Court's March 5, 1979 judgment and the "quantum of damage" evidence as provided by both Arkla and Respondents pursuant to its April 25, 1979 "Order," the Commission in its May 18, 1979 "Order Declining Jurisdiction" concluded that:

> "The Louisiana court properly looked to the intentions of the parties to the contract in determining the meaning of the contract . . .
>
> On April 25, 1979, we issued an "Order Requesting Additional Information to Supplement Record." Information received pursuant to that request confirms that damages do not exceed applicable area ceiling rates. Arkla contends that damages do exceed the applicable area ceiling rates. Arkla claims that the Louisiana courts erroneously awarded damages for liquefiable hydrocarbons. In this Commission's November 8,

1976, "Order Clarifying and Amplifying Commission Order Denying Rehearing" we stated:

> While the Commission has jurisdiction over natural gas containing liquefiable hydrocarbons, it has no jurisdiction over liquids after their removal from the gas stream. Consequently, if a contract provides for severable payments for the natural gas, including the liquefiable hydrocarbons contained therein, and the subsequently removed liquids, we would have jurisdiction over the sale of the natural gas containing the liquefiable hydrocarbons, but no jurisdiction over the sale of the liquids. But, there is a basic contract question presented with respect to the subject sale as to whether respondents are entitled under the sales contract to a price for the products removed by ARKLA from the natural gas purchased from respondents which is severable from the price for natural gas sold under such contract.

The Louisiana courts found that the contract provided for a price for the products removed from the gas severable from the price for the gas sold under the contract. The damages awarded for the actual natural gas, not including the severable payment for the products removed, was within the area ceiling rate . . .

On the facts of this case, the damages do not exceed applicable area ceiling rates. The Louisiana Supreme Court concluded that the Hall group was entitled to damages measured by the difference between the price Arkla paid the United States under the royalty agreement and the price it paid the Hall group. In so doing, it noted that it considered the fact that the Commission, in previous orders in this case, had stated the maximum rates to which the Hall group

would have been entitled if contractually authorized and if proper filing procedures had been followed. The Supreme court of Louisiana further stated:

> We note that plaintiffs make no claim that they would have been entitled to a price increase under their contract in excess of the respective area base rate ceilings for sales of natural gas as established by order of the Commission.

In light of the fact that the Hall group makes no claim for damages higher than the applicable area ceiling rates, that the Louisiana Supreme Court did not authorize rates higher than the applicable area ceiling rates, and that the state district court on remand from the Louisiana Supreme Court will presumably not award damages higher than the area ceiling rates, we do not feel that our regulatory responsibilities are so affected that we must exercise our jurisdiction in this case.

Since we find that we need not exercise jurisdiction under any of the three applicable factors, we decline jurisdiction.

The Commission orders:

Upon review on remand, we decline to exercise jurisdiction on this matter for the reasons stated above."

Further, the F.E.R.C. and the United States in their "Amici Curiae Brief" as filed in Docket No. 78-986 at pages 12, 14, 15 and 16 after reveiw of the Louisiana Supreme Court's March 5, 1979 judgment stated:

> "The Natural Gas Act may reinforce private contractual rights or abrogate them when they contravene relevant public interests. See *e.g., Permian Basin Area Rate Cases,* 390 U.S. 747, 784 (1968). However, absent adverse effects on the

interests protected by the regulatory scheme—for example, prices in excess of established ceilings—the parties should be left to the bargain they have made. This is an appropriate rule even though, under Section 4(c) of the Natural Gas Act, 15 U.S.C. 717c(c), every contract for the interstate sale of gas had to be filed with the Commission. Otherwise, the Commission and the federal courts would be inundated by 'a vast current of [contract] litigation indubitably arising under State law * * * *.' *Skelly Oil Co.* v. *Phillips Co.*, 339 U.S. 667, 673 (1950) . . .

Nor does construction of the favored nations clause on the basis of the intentions of the contracting parties affect the Commission's regulatory responsibilities. Resolution of the dispute turns on evidence of dealings between the parties relevant only to this case . . .

The respondents claimed no damages in excess of rate ceilings established by Commission orders. Thus, while the Commission undoubtedly has primary jurisdiction to consider the reasonableness of rates and practices in order to prevent disruption of the regulatory scheme and the unbalancing of existing rate structures (*United States* v. *Radio Corporation of America, supra*, 385 *.S. at 348), no such issues were presented.

Respondents sought only to recover from petitioner rates to which they were legally entitled under their contracts and the Natural Gas Act. Under the National Gas Act and well established federal law, jurisdictional sellers of gas are entitled only to rates set forth in their filed rate schedules or (to the extent they are excused from filing such schedules) under their contract pricing provisions, but in no event in excess of Commission established ceilings . . .

Since the measure of damages claimed turned on lease payments to the United States which did

not exceed Commission applicable area ceilings (App., *infra*, 15a), there was no question concerning the reasonableness of the rates for the Commission to consider."

Thus, the United States, the F.E.R.C. and F.E.R.C.'s staff counsel after carefully and thoroughly reviewing the Louisiana Supreme Court's March 5, 1979 judgment and the relevant "quantum of damages" evidence as presented to that court, have again conclusively confirmed that the Louisiana court's award of compensatory damages for the actual losses attributable to Respondents' residue natural gas from 1961 to 1972, as well as from 1972 through 1975, were properly measured by Respondents' contractually authorized prices, which they did *not* receive because of Arkla's continued breach of contract for fourteen years, that were consistently *below* the Commission's applicable and approved maximum, lawful, just and reasonable area rate ceilings for these specific periods of time.

With respect to the Louisiana Supreme Court's award of compensatory damages for the actual losses attributable to Respondents' extracted liquid hydrocarbons, gasoline and plant products from September, 1961 through December, 1975 *and* the actual losses attributable to Respondents' residue natural gas from October, 1972 through December, 1975, the United States, the F.E.R.C. and its staff counsel after having reviewed the Louisiana Supreme Court's judgment of March 5, 1979 confirmed its approval of that portion of the damage judgment.

However, the United States, the Commission and its staff counsel suggested, erroneously Respondents respectfully submit, that technically the Louisiana

Supreme Court's award of compensatory damages for the actual losses attributable to Respondents' residue natural gas from September, 1961 through September, 1972 was in "conflict" with the Commission's prospective notice filing requirements under section 4(d) of the Natural Gas Act for the period prior to Respondents having been administratively classified as "small producers" (October, 1972). Further, the United States, the F.E.R.C. and its staff counsel suggested that Respondents should not recover their compensatory damages for the actual losses attributable to their residue natural gas from 1961 to 1972 "*unless or until [Respondents] seek and obtain waiver of the requirements*" for prospective notice filings under section 4(d) or until "*they are excused from filing such schedules*". Specifically, the Commission in its May 18, 1979 "Order Declining Jurisdiction After Reconsideration of the Issue on Remand" noted:

> "As we stated above, the Louisiana Supreme Court, in effect, waived one of this Commission's filing requirements when it determined that the Hall group was entitled to damages back to 1961. This holding of the Louisiana Supreme Court conflicts with the filed rate doctrine."

The Commission's staff counsel in addressing this same point in its "Supplemental Memorandum of Commission Staff Addressing Decision of Louisiana Supreme Court" dated April 16, 1979, concluded that:

> "The question of whether to waive the filing requirement of §4(d) of the Natural Gas Act under these circumstances is within the primary jurisdiction of the Commission. Moreover, it is important, we believe, for the Commission to exercise its jurisdiction in this case insofar as it relates to the filing requirements under the Natural

Gas Act and the Commission's regulations pertaining thereto. Aside from the Commission's expertise in such matters, the decisions on these issues should be consistent.[5]

The Commission is reconsidering the prior orders issued by the FPC in this proceeding which have been remanded from the U.S. Court of Appeals. Hall has not requested in this proceeding that the Commission waive the filing requirements of §4(d) of the Natural Gas Act. Therefore, it would be appropriate for the Commission, in addition to asserting that it has primary jurisdiction, to reassert the position taken by the FPC in its June 4, 1976 order in this proceeding that Hall is not entitled prior to October 10, 1972 to any rate in excess of that on file with the Commission and in effect under its FERC Gas Rate Schedule No. 4 unless or until it seeks and obtains waiver of the requirements. Staff adheres to the position taken in its brief that it is unnecessary for the Commission to exercise its primary jurisdiction to determine whether the favored nation clause at issue here has been triggered.

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[5] The Court's decision in *Cities Service Gas Co.* v. *FPC*, 535 F2d 1278 (D.C. Cir. 1976) is inapplicable here. The Court in affirming the Commission there held that, where a state court awarded damages for breach of an implied contractual obligation to cooperate with an abandonment application filed with the Commission, the doctrines of *res judicata* and equitable estopel did not apply in a producer unilateral rate filing proceeding involving the same contract, because the implied contractual obligation was different from obligations under the Natural Gas Act. Unlike *Cities Service*, damages were awarded by the Louisiana Court for breach of the obligation to pay the contract price, rather than for breach of an implied obligation. Such rate obligations are subject to the requirements of the Natural Gas Act."

Respondents respectfully submit that under proper analysis of the F.P.C.'s and F.E.R.C.'s own "Orders"

there is no real or technical "conflict" between that portion of the Louisiana Supreme Court's damage judgment which compensates Respondents for the actual losses attributable to their residue natural gas from September, 1961 through September, 1972 and the actual "*public interest purpose*" of the prospective notice filing requirements under section 4(d) of the Natural Gas Act in light of the established and inescapable fact that the contractually authorized prices which Respondents *would* and *could* have received for their residue gas from 1961 to 1972 were substantially *below* the Commission's applicable and lawful area rate ceilings and that Arkla, as Respondents' contractual obligor, wrongfully obstructed, prevented and precluded Respondents from timely making the routine and technical notice filings from 1961 to 1972.

However, Respondents in order to remove and eliminate even a possible question or theoretical "conflict" have, pursuant to the suggestion and statements made by the Commission's staff counsel in their "Supplemental Memorandum Addressing Decision of Louisiana Supreme Court" dated April 16, 1979 and the F.E.R.C. in its May 18, 1979 "Order Declining Jurisdiction", formally filed "*An Application for a Waiver*" of the prospective notice filing requirements of section 4(d) of the Natural Gas Act from 1961 to 1972 in light of the inequitable and unjust fact that Arkla wrongfully prevented and absolutely precluded Respondents from prospectively making the routine notice filings from 1961 to 1972. A copy of Respondents' formal "*Application for a Waiver*" as filed with the F.E.R.C. on May 24, 1979, after Respondents concluded the Louisiana state court litigation which de-

finitively established and confirmed Arkla's wrongdoing and the legal validity of Respondents' private contractual rights, is attached hereto as Respondents' Appendix A. Respondents' "*Application for a Waiver*" as formally filed with the F.E.R.C. on May 24, 1979 is still pending.

The Commission's granting of Respondents' "*Application for a Waiver*", which it clearly should grant under the inequitable and unjust circumstances of this case and well established principles of law, equity and justice as consistently heretofore applied by the Commission and the courts in numerous other cases involving the failure to prospectively make certain notice filings[12], would completely remove, eliminate, and render moot any possible or theoretical contention that Respondents' recovery of compensatory damages for the actual losses attributable to their residue natural gas from September, 1961 through September, 1972 is under the circumstances of this case in "conflict" with the real "*public interest purpose*" of the prospective notice filing requirements of section 4(d) of the Natural Gas Act.

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[12] The Commission without question has the "*equitable power and authority*" to grant a "waiver" of the prospective filing requirements of section 4(d) of the Natural Gas Act under the circumstances of this case and has heretofore under other deserving circumstances consistently exercised its "*equitable power and authority*" to administer and effectuate "justice". See *Plaquemines Oil and Gas Co.* v. *F.P.C.*, 450 F.2d 1334 (D.C. Cir. 1971); *Central Maine Power Co.* v. *F.P.C.*, 345 F.2d 875 (1st Cir. 1965); *Niagara Mohawk Power Corp.* v. *F.P.C.*, 379 F.2d 153 (D.C. Cir. 1967); *Moss* v. *C.A.B.*, 521 F.2d 298 (D.C. Cir. 1975) at page 307, ft.nt. 17; *Montana Power Co.* v. *F.P.C.*, 330 F.2d 781 (9th Cir. 1964); and *Rowan* v. *Allied Chemical Corp.*, 39 F.P.C. 64 (1968).

As properly noted and correctly observed by the court in the case of *Niagara Mohawk Power Corporation* v. *Federal Power Commission*, 379 F.2d 153 (D.C. Cir. 1967):

> ". . . It is indeed a 'familiar principle of equity * * * to regard as being done that which should have been done.'
>
> The principles of equity are not to be isolated as a special province of the courts. They are rather to be welcomed as reflecting fundamental principles of justice that properly enlighten administrative agencies under law. The courts may not rightly treat administrative agencies as alien intruders poaching on the court's private preserves of justice. Courts and agencies properly take cognizance of one another as sharing responsibility for achieving the necessities of control in an increasingly complex society without sacrifice of fundamental principles of fairness and justice. . ."

As noted by the court in *Plaquemines Oil and Gas Co.* v. *Federal Power Commission*, 450 F.2d 1334 (D.C. Cir. 1971):

> "The question on this appeal is whether the Federal Power Commission, in retroactively applying the Natural Gas Act to sales of the Plaquemines Oil and Gas Company between 1961 and 1966, the years in which the Commission asserted jurisdiction over such sales and in which Plaquemines filed for certification, was justified in flatly requiring Plaquemines to refund all sums derived from a 1964 rate increase without first determining its validity. The Commission simply ruled that since Plaquemines' sales in 1964 were within the jurisdiction of the Commission and "a rate change pursuant to a contract escalation provision is forbidden inthe absence of compliance

with the filing provisions of the Act," the 1964 rate increase was without effect and the sums derived therefrom must be refunded. For reasons that follow we reverse and remand to the Commission. . .

III. Equitable Retroactive Application of the Act to Plaquemines

. . . Likewise, we do not hesitate to apply here the position we took with respect to comparable provisions of the Federal Power Act in Niagara Mohawk Power Corp. v. *FPC:* that the Commission, in acting upon applications for certification filed some time after Commission jurisdiction was asserted (in this case about five years), has the equitable power "to regard as being done that which should have been done" by recreating the past, insofar as is reasonably possible, to reflect compliance with the Act . . .

In this case, however, there appears to have been some confusion on the Commission's part in carrying out its purposes in retroactively applying the Act. Time and again in brief, the Commission reminds us that all it was doing with respect to Plaquemines' jurisdictional sales in the period 1961-1966 was recreating the past to reflect *compliance* with the Act. And indeed, with respect to sales made by Plaquemines in 1961 when Plaquemines should have filed for certification, the Commission did just that: it found that had Plaquemines filed under section 7 in 1961, the rate charged Tennessee would have been in compliance with the Act and hence no compensatory steps were required.

When it came to the 1964 rate increase, however, the Commission seems to have forgotten its original purpose: *reconstructing* Plaquemines' jurisdictional sales between 1961 and 1966 to reflect *compliance* with the Act . . .

> We think that having started out to reconstruct Plaquemines' sales to reflect compliance with the Act, the Commission was bound to carry that purpose through in regard to all transactions that would have been the subjects of filings had Plaquemines been complying with the Act in the 1961-1966 period. Thus it was error to reject the 1964 rate increase without first attempting to determine whether the rate rise would have been accepted by the Commission had it been the subject of a post-adjustment filing in 1964.
>
> We are at a loss to understand why this approach was eschewed in this case, particularly in view of evidence in the Commission's Supplemental Memorandum, filed after oral argument, showing that this course *was* followed in retroactively applying the Act to all 36 other restricted-use contracts over which jurisdiction of the Commission was extended in *Lo-Vaca*. No gas company involved in such contracts filed for certification until after the Supreme Court decision in 1965, and each restricted-use contract contained escalation clauses providing for rate increases between 1961 and 1965. Yet not one other gas company, though identically situated to Plaquemines, was required to refund sums resulting from such rate increases on the mere ground that they were not filed in accordance with section 4(d) of the Act."

Now that Respondents have definitively concluded the Louisiana breach of contract and damage case and now that Respondents have formally filed an "*Application for a Waiver*" of the prospective notice filing requirements of section 4(d) with the F.E.R.C., Respondents as citizens of this Nation have done everything that is humanly possible to achieve and obtain basic and fundamental justice in this case. If the F.E.R.C. believes that under the facts of this case the

Louisiana Supreme Court's application of Article 2040 of the Louisiana Civil Code and the doctrine of contract *estoppel* to Arkla's continued wrongdoing and breach of contract from 1961 to 1975 "conflicts" with its jurisdiction and authority to grant "waivers" under section 4(d) and its regulations (18 C.F.R. §154.98), then the F.E.R.C., as "an instrumentality of justice" and the successor of the F.P.C. which properly issued the November 8, 1976 clarifying "Order" (Exhibit D-59) as relied upon by the Louisiana Supreme Court, should in light of Arkla's continued breach of contract and misconduct for fourteen years promptly grant the formal "waiver" as formally requested by Respondents on May 24, 1979.

Certainly, the fact that Arkla wrongfully obstructed, prevented and precluded Respondents from timely and prospectively making the routine notice filings from 1961 to 1972 by effectively withholding and concealing all of the true, relevant and material facts from Respondents from 1961 through 1975 constitutes a valid legal "*excuse*" for Respondents' failure to timely file the notices from 1961 to 1972. Clearly, the inequitable and unjust reasons and factors that wrongfully obstructed, prevented and precluded Respondents from timely and prospectively filing notices of increases in their contractually authorized prices for their residue natural gas with the Commission from 1961 to 1972 under section 4(d) of the Natural Gas Act are far more compelling and inequitable than were the reasons and factors as to why Plaquemines Oil and Gas Company and the other *36* sellers failed to prospectively file notices of their contractually authorized price increases for their residue natural gas with the Commission from 1961 to 1966 under section 4(d) of the Natural Gas Act. Thus, without

question, the fifteen individual Respondents herein are under the factual circumstances of this case and well established rules of law, equity and justice entitled to the same "equitable" relief and "waiver" that was properly granted by the Commission and the courts to *Plaquemines Oil and Gas Company* and the other *36* sellers under the factual circumstances of those cases.

Again, the Commission's granting of the formal "waiver" would in light of the inequitable facts and circumstances of this case, the F.P.C.'s November 8, 1976 clarifying "Order" (Exhibit D-59) and other cases be entirely consistent, just and proper; and would certainly eliminate and properly render moot any possible or theoretical "conflict" between Respondents' recovery of compensatory damages for the actual losses attributable to their residue natural gas from 1961 to 1972 as measured by contractually authorized prices that were well *below* the Commission's applicable and lawful area rate ceilings *and* the "relevant public interest" against *excessive prices* for residue natural gas sold in interstate commerce, which "relevant public interest" as again conclusively confirmed by the United States, F.E.R.C. and its staff counsel is concededly *not* adversely involved or affected by the Louisiana Supreme Court's March 5, 1979 judgment in the instant breach of contract and damage case.

VII.

CONCLUSION

For the foregoing reasons, Arkla's petition for a writ of certiorari should be denied.

Respectfully submitted,

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July, 1979

APPENDIX

RESPONDENTS' EXHIBIT A

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Docket No. RI76—28

ARKANSAS LOUISIANA GAS COMPANY
v.
FRANK J. HALL, et al.

APPLICATION OF RESPONDENTS FOR A WAIVER OF NOTICE REQUIREMENT PURSUANT TO SECTION 154.98 OF THE COMMISSION'S REGULATIONS

Pursuant to section 154.98 of the Commission's regulations, the fifteen individual respondents in this proceeding hereby apply for a waiver of the notice requirements of section 4(d) of the Natural Gas Act if the Commission believes that these requirements apply in the circumstances present here. As explained in detail below, timely compliance with section 4(d) was impossible because for fourteen years the only party that would have been interested in notice of rate changes withheld and concealed the facts that would have made timely notice possible. These facts were kept from respondents from 1961 through 1974, and subsequent litigation establishing their validity has only recently been concluded. Thus, respondents are now, for the first time, able to file the appropriate information with the Commission.

I.

This application pertains to a January 11, 1952 natural gas sales contract which was placed before the Commission by Arkansas Louisiana Gas Company ("Arkla"). The nature of the contract and the pertinent events subsequent to its execution have been set forth in the voluminous pleadings already filed in this proceeding and will only be

summarized here in extremely cursory fashion. In brief, the contract is between Arkla and respondents and in accordance with the contract and Arkla's related division order contracts respondents' dry or residue natural gas, liquid hydrocarbons, natural gasoline, and extracted plant products have been delivered and sold to Arkla. The contract contains a favored nations clause allowing for increased prices to be paid to respondents by Arkla under certain circumstances. In July 1974 a dispute between Arkla and respondents arose as to whether the favored nations clause had been triggered, thus contractually entitling respondents to higher prices for their production. The triggering event—a contractual arrangement between Arkla and the United States Government—was concealed by Arkla from respondents, who for fourteen years were wrongfully kept unaware of their contractual entitlement to higher prices for their dry or residue natural gas, liquid hydrocarbons, natural gasoline, and extracted plant products.

After the Commission in this docket refused Arkla's request to adjudicate the breach of contract and damage dispute and instead deferred to the Louisiana state courts, the Louisiana courts conducted a lengthy trial and determined that the favored nations clause had been breached and triggered for fourteen years. The courts also found that Arkla had during the period in question effectively concealed the true facts from respondents about its triggering of the favored nations clause and thereby made it impossible for respondents to file prospectively any changes in their rate schedules at the Commission with respect to their contractually authorized prices for their dry or residue natural gas as they otherwise would have done. Accordingly, the Louisiana Supreme Court has awarded compensatory damages to respondents measured by the contractually authorized prices that were due them from Arkla during the period in question (1961-1975) for their dry or residue natural gas, liquid hydrocarbons, natural gasoline, and extracted plant products.

In a memorandum in this proceeding dated April 15, 1979, Commission staff counsel suggested that damages should not be awarded with respect to respondents' dry or residue natural gas for the period from 1961 to 1972 (at which time respondents became "small producers" under the Commission's regulations) because they had failed to file timely notices of rate changes with the Commission. Commission staff noted that respondents had not in this proceeding filed for a waiver of the filing requirement with respect to their contractually authorized prices for their dry or residue natural gas from September 1961 through September 1972.

Respondents do not believe that a waiver of the notice and filing requirement is necessary under the circumstances of this proceeding and the related Louisiana breach of contract and damage case. Section 4(d) of the Natural Gas Act, which establishes the requirement in question, simply has no applicability to an award of compensatory damages by a court for the breach and violation of contractual obligations, especially when the obligor-wrongdoer has by its *own* continued breach of contract and misconduct prevented the injured parties from timely complying with the prospective filing requirements. *See, e.g., Cities Service Gas Co.* v. *FPC*, 535 F.2d 1278 (D.C. Cir. 1976), in which the court held that a party's legal obligation to respond in damages for private contractual breaches is an entirely "separate and independent" issue from the question of claims arising under requirements of the Natural Gas Act. It follows, therefore, that an award of compensatory damages for breach of contractual duties cannot properly be abrogated by the wrongdoer's obstruction, frustration, and prevention of timely compliance with notice and filing requirements under the National Gas Act. Such an interpretation of the Act would arbitrarily nullify legitimate contractual rights and effectuate gross injustices without serving any purpose of the Act. *See also: Gulf Oil Corp.* v. *American Louisiana Pipeline Co.*, 282 F.2d 401 (6th Cir.

1960); *Western Natural Gas Co.* v. *Cities Service Gas Co.*, 507 P.2d 1236 (Okla. 1972), *appeal dismissed* and *cert. denied*, 409 U.S. 1052 (1972); and *Pan American Petroleum Corp.* v. *Superior Court of Delaware*, 366 U.S. 656 (1961).

Nevertheless, while respondents maintain their position that a waiver of the requirements of section 4 is not required because of Arkla's *own* continued breach of contract and wrongdoing for fourteen years, respondents hereby submit a request for such a waiver pursuant to section 154.98 of the Commission's rules in the event that the Commission believes that such a waiver is required under the circumstances of this proceeding.

In filing for this waiver, respondents do not intend that the final and definitive Judgment of the Louisiana Supreme Court dated March 5, 1979, as it specifically relates to the contractual issue of whether the favored nations clause in question was breached and triggered, should be reviewed by the Commission. After the Commission deferred the breach of contract and damage dispute to the Louisiana courts, respondents undertook a protracted and expensive trial which has resulted in a final and definitive judgment from the Louisiana courts determining that such triggering occurred and that the contract had been breached and violated by Arkla for fourteen years. Since this contractual issue has been fully litigated and Arkla has been afforded complete opportunity to argue its interpretation of the contract, this matter is foreclosed under the doctrines of res judicata and collateral estoppel from relitigation at the Commission.

In filing this request for a waiver, respondents also maintain their position that the failure to file prospectively changes in respondents' rate schedules with the Commission is not a defense that Arkla as the wrongdoer is entitled to assert, either in the courts or before the Commission. The Louisiana Supreme Court properly ruled that Arkla

was, under long recognized principles of contract law, estopped to assert such a defense since its own breach of contract and wrongful conduct made it impossible for respondents to file timely changes in rates as they were entitled to do under their contract with Arkla. Thus, the Commission should not purport to exercise any jurisdiction over the contractual and damage dispute between Arkla and respondents based on the absence of timely filings (or on any other ground).

Apart from adjudicating the contract dispute issue, however, as respondents have previously acknowledged in pleadings in this docket, the Commission is certainly entitled to ascertain whether there might be a violation of the Natural Gas Act occasioned by the award of compensatory damages by the Louisiana courts. This is an issue between the Government and respondents, and would be a matter in which Arkla has no legal interest. As set forth in this submission and previously, respondents have shown that the award of compensatory damages under the circumstances of this case does not constitute a violation of the Natural Gas Act or any of the purposes for which it was enacted by Congress, even if the prospective notice and filing requirements of section 4 are unsatisfied due to Arkla's continued breach of contract and effective concealment of the true facts from respondents for fourteen years. In the event that the Commission believes otherwise, however, respondents seek by this application a waiver of these requirements.

II.

In determining whether to grant a waiver under the circumstances of this case and section 154.98 of the Commission's rules, we respectfully submit that the Commission should consider whether the public interest would be served or disserved by denying such a waiver under the circumstances of this case. As we will now demonstrate,

respondents' contractually authorized price increases for their dry or residue natural gas would have been routinely approved had the notice filings been made in a timely fashion. The only reason such filings were not timely made is because Arkla wrongfully prevented them from being made. No public interest would be served by enforcing the prospective notice and filing requirement at this time under the circumstances of this case. Instead, the only beneficiary would be Arkla, the very party that wrongfully interfered with and made impossible respondents' timely compliance with the Commission's filing regulations, a result plainly contrary to the public interest and basic justice. Accordingly, a waiver is entirely appropriate here. The following considerations amply confirm this:

1. Over eighteen years ago the Commission determined that favored nations clauses contained in natural gas sales contracts entered into prior to April 3, 1961, are consistent with the public interest and thus are valid and enforceable as a matter of contract law up to the Commission's maximum area rate ceilings. The contract between Arkla and respondents was perfected on January 11, 1952. Hence, the price increases called for by the contract were and are permitted under Commission regulations. 18 C.F.R. § 154.93

2. The Louisiana Supreme Court has finally and definitively determined, in a judgment dated March 5, 1979, that respondents were from September 1961 through September 1972 (the period of time prior to respondents being classified as "small producers" under the Commission's regulations) contractually entitled to receive for their dry or residue natural gas as sold to Arkla the same prices that Arkla paid to the United States Government for dry or residue royalty gas produced from the same Sligo Gas Field, Bossier Parish, Louisiana, and delivered into Arkla's same Sligo pipeline system. A copy of Arkla's November 15, 1962 letter contract with the United States

Government setting forth the specific prices which Arkla agreed to pay and did in fact pay for the Government's residue royalty gas is attached as Exhibit A. In light of the Louisiana Supreme Court's judgment, respondents were, under their sales contract with Arkla, contractually entitled to receive the following prices for their dry or residue natural gas:

Sept. 1961 through Dec. 1961	Jan. 1962 through Dec. 1966	From Jan. 1, 1967
$0.117432 per Mcf	$0.130252 per Mcf	$0.140508 per Mcf

3. Maximum area rate ceilings applicable to the residue natural gas in question have been established by the Commission and cover the entire period in issue, 1961-1975. *See* "Statement of General Policy 61-1." 24 F.P.C. 818; Other Southwest Area Rate Order Nos. 607 and 607-A, 18 C.F.R. §§ 154.109 and 154.109a. In the proceedings that led to establishment of these rate ceilings, the Commission fully considered all factors affecting the public interest and set the maximum just and reasonable rates that could be charged. The appropriateness of these determinations is not at issue.

The maximum area rate ceiling established by the Commission in 1961 was $0.14 per Mcf at 15.025 p.s.i.a. (24 F.P.C. 818). This rate was superseded by the Other Southwest Area Rate Orders, which established the following maximum area rates for the sale of dry or residue natural gas in interstate commerce as produced from North Louisiana:

Prior to January 1, 1965	From Jan. 1, 1965 thru Sept. 30, 1968	From October 1, 1968 thru 1972
16.7¢ per Mcf at 15.025 psia	18.6¢ per Mcf at 15.025 psia	20.6¢ per Mcf at 15.025 psia

Had respondents been aware of Arkla's contractual agreements and activities with respect to its purchases of dry or residue gas, liquid hydrocarbons, natural gasoline, and extracted plant products from the Government and thus had the opportunity to file new rate schedules in a timely manner, these are the ceiling rates that would have governed the prices respondents were entitled to receive for their dry or residue natural gas. In a prior order in this proceeding (dated November 8, 1976), the Commission itself indicated that respondents could have collected rates for their natural gas up to these ceiling levels if they were contractually authorized and if proper filing procedures were followed:

> Respondents request amplification of the Commission's order issued June 4, 1976, in regard to the maximum rates, for each year beginning in the fall of 1961 through the year 1972 which, if contractually authorized and if proper filing procedures had been followed, would have been approved by the Commission pursuant to its "Other Southwest Area Rate" Opinion Nos. 607 and 607-A. The respective area base rate ceilings for sales of natural gas under Opinion Nos. 607 and 607-A from Northern Louisiana by a producer with contractual authority who properly filed are:
>
Prior to January 1, 1965	From January 1, 1965 Thru September 30, 1968	From October 1, 1968 thru 1972
16.7¢ per Mcf at 15.025 psia	18.6¢ per Mcf at 15.025 psia	20.6¢ per Mcf at 15.025 psia
>
> Where, as here, the sale contract provides for the sale of natural gas at the wellhead, the ceilings set forth above for such sale are subject to a 1.0¢ per Mcf downward adjustment for wellhead delivery.

These ceiling rates are substantially *higher* than the prices that Arkla paid to the Government for its dry or residue natural gas pursuant to its November 15, 1962

letter contract and hence that respondents were entitled to receive under the favored nations clause contained in their 1952 gas sales contract with Arkla. Thus, it is beyond question that respondents would have received the prices due them under their contract with Arkla if they had been able to timely comply with the Commission's filing requirements.

4. Respondents' inability to file for the increased prices owed them under the favored nations clause was due wholly to Arkla's continued breach of contract and misconduct for fourteen years. As explained by the Louisiana Supreme Court in its March 5, 1979 decision:

> To realize this higher, contractually-authorized price, plaintiffs, pursuant to the Natural Gas Act, were required to file new rate schedules with the Commission. *However, plaintiffs were effectively precluded from making the requisite filings because they were not, at any time, informed by defendant that it was, in fact, paying a higher price to another party seller.* Although defendant was only bound to pay plaintiffs a higher price if plaintiffs filed new rate schedules with the Commission, *it is apparent that defendant prevented the fulfillment of that condition (plaintiffs filing with the Commission)* by failing to inform plaintiffs of its contractual arrangements with the United States Government. (Emphasis added.)

In its decision, the Louisiana court of appeal expressly labeled Arkla's breach of contract and conduct in this regard as "evasive," "uncooperative," and "not commendable."

Thus, due to Arkla's continued breach of its contractual responsibilities and its wrongful withholding and concealment of the true facts from respondents for fourteen years, it was simply impossible for respondents to comply with the prospective filing requirements of section 4(d) of the Natural Gas Act from September 1961 through September 1972.

5. Refusal to permit a waiver of the requirement of section 4(d), if that requirement is applicable under the circumstances here, would be plainly unjust. Section 4(d) clearly contemplates situations where the seller of the gas knows or has available the facts necessary to complete a filing and does not address the situation presented here, where Arkla as the contractual-obligor and purchaser effectively withheld the relevant facts for fourteen years and thereby wrongfully prevented respondents from making the filings. The filing requirement exists to allow the Commission to exercise its review function. *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 342 (1965). Where maximum area rates already exist, however, enforcement of the filed rate doctrine does *not* serve that function and, in this case, would unjustly benefit Arkla, the party that wrongfully prevented the filings. The filing requirements of the Natural Gas Act were clearly predicated on the assumption that pipeline purchasers, such as Arkla, would timely cooperate with sellers when necessary and were never intended as a device for evading and avoiding legitimate contract obligations. *Cf. Western Natural Gas Co.* v. *Cities Service Gas Co.*, 507 P.2d 1236 (Okla.), *appeal dismissed* and *cert. denied*, 409 U.S. 1052 (1972); *Cities Service Gas Co.* v. *FPC*, 535 F.2d 1278 (D.C. Cir. 1976); *Gulf Oil Corp.* v. *American Louisiana Pipe Line Co.*, 282 F.2d 401 (6th Cir. 1960); and *Pan American Petroleum Corp.* v. *Superior Court of Delaware*, 366 U.S. 656 (1961).

In *Plaquemines Oil & Gas Co.* v. *FPC*, 450 F.2d 1334 (D.C. Cir. 1971), the court considered the situation in which a natural gas company did not make the required filings with the Commission between 1961, when the Commission first asserted jurisdiction over the type of transaction involved, and 1966, after the Supreme Court upheld the Commission's assertion of jurisdiction. Under the literal terms of the Natural Gas Act, the company's operations during that period were unlawful and thus no rates were collectible. The Court noted, however, that under such a

theory "*the effects of such a ruling would be ruinous to Plaquemines' services—a wholly unreasonable and unpalatable result.*" 450 F.2d at 1139 n.15. The Court went on to state that "*this approach smacks of the vindication of statutory duties rather than the reasoned retroactive application of a statute. . . .*" (Emphasis added.)

In short, even though the company in *Plaquemines* had deliberately not complied with Commission filing requirements because of the litigation, the Commission engaged in retroactive analysis, and the court clearly indicated that it would have been unreasonable not to have done so. It follows a fortiori that in the present case where the filing requirements could not be complied with because Arkla as the purchaser under a gas sales contract violated the terms of the contract and withheld the true facts for fourteen years, any conclusion that Arkla's wrongdoing should be ignored and that the Natural Gas Act should be read with absolute literalness to prevent the award of compensatory damages in this case would be improper and unjust.

6. The Louisiana Supreme Court determined that Arkla would not be permitted to raise as a defense to respondents' action for damages for breach of contract respondents' failure to prospectively comply with Commission filing requirements because Arkla had made that compliance impossible. The same rationale should be adopted by the Commission in support of a waiver of any applicable filing requirements since it is a well-established principle. *See, e.g., United States* v. *Peck,* 102 U.S. 64 (1880):

> "[T]he conduct of one party to a contract which prevents the other from performing his part is an excuse for non-performance . . . It is a sound principle that he who prevents a thing being done shall not avail himself of the non-performance he has occasioned."

Numerous other examples of the application of this principle can be cited, including the following:

(a) *R.H. Stearns Co.* v. *United States,* 291 U.S. 54 (1934):

"The applicable principle is fundamental and unquestioned. 'He who prevents a thing from being done may not avail himself of the non-performance which he has himself occasioned, for the law says to him in effect "this is your own act, and therefore you are not damnified." ' *Dolan* v. *Rodgers,* 149 N.Y. 489, 491; 44 N.E. 167; and *Imperator Realty Co.* v. *Tull,* 228 N.Y. 447, 457; 127 N.E. 263; quoting *West* v. *Blakeway,* 2 Man. & G. 828, 839. Sometimes the resulting disability has been characterized as an estoppel, sometimes as a waiver. The label counts for little. Enough for present purposes that the disability has its roots in a principle more nearly ultimate than either waiver or estoppel, the principle that no one shall be permitted to found any claim upon his own inequity or take advantage of his own wrong."

(b) *Dietrick* v. *Greaney,* 309 U.S. 190 (1940):

"It is a principle of the widest application that equity will not permit one to rely on his own wrongful act, as against those affected by it but who have not participated in it, to support his own asserted legal title or to defeat a remedy which except for his misconduct would not be available. See United States v. Dunn, 268 US 121, 133, 69 L ed 876, 882, 45 S Ct. 451; Independent Coal & Coke Co. v. United States, 274 US 640, 648, 71 L ed 1270, 1278, 47 S Ct. 714."

(c) *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405 (1975):

"And where a legal injury is of an economic character,

'[t]he general rule is, that when a wrong has been done, and the law gives a remedy, the compensation shall be equal to the injury. The latter is the standard by which the former is to be measured. The injured party is to be placed, as near as may be, in the situation he would have occupied if the wrong had not been committed.' Wicker v. Hoppock, 6 Wall 94, 99, 18 L Ed 752 (1867).' "

(d) *Story Parchment Co.* v. *Paterson P. Paper Co.*, 282 U.S. 555 (1931):

"As the supreme court of Michigan has forcefully declared, the risk of the uncertainty should be thrown upon the wrongdoer instead of upon the injured party. Allison v. Chandler, 11 Mich. 542, 550-556. . . .

'. . . And the adoption of any arbitrary rule in such a case, which will relieve the wrongdoer from any part of the damages, and throw the loss upon the injured party, would be little less than legalized robbery.' "

(e) *Ballard* v. *El Dorado Tire Co.*, 512 F.2d 901 (5th Cir. 1975):

"It is a principle of fundamental justice that if a promisor is himself the cause of the failure of performance, either of an obligation due him or of a condition upon which his own liability depends, he cannot take advantage of the failure.

In reflecting upon this jural proposition, a federal court has observed that 'Where liability under a contract depends upon a condition precedent one cannot avoid his liability by making the performance of the condition precedent impossible, or by preventing it.' The illustrations of this principle are legion. 5 Williston on Contracts §677, pp. 224-225, quoting Gulf Oil Corp. v. American Louisiana Pipe Line Co., 6 Cir., 1969, 282 F.2d 401."

(f) *Ammerman* v. *Miller*, 488 F.2d 1285 (D.C. Cir. 1973):

"Deeply rooted in our jurisprudence is the rule applied by the District Court herein as enunciated in Coastal Oil Co. v. Eastern Tankers Seaways Corp., 29 N.J. Super. 565, 103 A.2d 26 (1954) as follows:

> 'It is well established as a principle of fundamental justice that if a promisor prevents or hinders the occurrence or fulfillment of a condition in a contract, and the condition could have been fulfilled except for such hindrance or prevention on the part of the promisor, then the performance of the condition is excused and the liability of the promisor is fixed regardless of failure to fulfill the condition.' 103 A.2d 32.

See also United States v. Peck, 102 U.S. 64, 26 L. Ed. 45 (1880); Gulf Oil Corporation v. *American Louisiana Pipe Line Co., 282 F.2d 401 (6th Cir. 1960); Tradewell Foods* v. New York Credit Men's adj. Bur., 179 F.2d 567 (2nd Cir. 1950); Restatement of Contracts §§294, 295 (1932); 5 S. Williston, Contracts §677 (3rd ed. 1961); 17A C.J.S. Contracts §468b (1963)."*

7. It is well established that common law claims based on natural gas sales contracts retain their character and continue to exist under the Natural Gas Act. *See, e.g., Pan American Petroleum Corp.* v. *Superior Court of Delaware,* 366 U.S. 656 (1961); *Gulf Oil Corp.* v. *American Louisiana Pipeline Co.,* 282 F.2d 401 (6th Cir. 1960); *Western Natural*

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* *See also, e.g.,* Ohasi v. Verit Industries, 536 F.2d 849 (9th Cir. 1976); Keener v. Sizzler Family Steak Houses, 424 F. Supp. 482 (N.D. Tex. 1977); Lee Shops, Inc. v. Schatten-Cypress Co., 350 F.2d (6th Cir. 1965); Spanos v. Skouras Theatres Corp., 364 F.2d 161 (2d Cir. 1966); Foster v. Colorado Radio Corp., 381 F.2d 222 (10th Cir. 1967); Calon Petroleum Co. v. Big Chief Drilling Co., 548 F.2d 1174 (5th Cir. 1977); Concrete Specialties v. H. C. Smith Construction Co., 423 F.2d 670 (10th Cir. 1970); Kentucky Skilled Craft Guild v. General Electric Co., 431 F.2d 62 (6th Cir. 1970); C. H. Codding & Sons v. Armour and Co., 404 F.2d 1 (10th Cir. 1965); Ace Construction Co. v. W. H. Nichols & Co., Inc., 353 F.2d 110 (10th Cir. 1965); Ryder Truck Rental, Inc. v. Central Packing Co., 341 F. Supp. 872 (S.D.N.Y. 1977); Waters v. Key Colony East, Inc., 345 So.2d 367 (Fla. 1977); Transnational Insurance Co. v. Roselund, 261 F. Supp. 12 (D. Or. 1966); Galfand v. Chestnutt, 402 F. Supp. 1318 (S.D.N.Y. 1975); Glassman Const. Co., Inc. v. Maryland City Plaza, Inc. v. Milk Drivers & Dairy Emp. U. Local 584, 222 F. Supp. 125 (1963); Casale v. Carrigan and Boland, Inc., 288 So.2d 299 (La. App. 1974); Groghan v. Billingsley, 313 So.2d 255 (La. App. 1975); Briggs v. Siggio, 285 So.2d 324 (La. App. 1976); Chartres Corp. v. Charles Carter & Co., Inc., 346 So.2d 796 (La. App. 1977); Watson Bros. Transportation Co. v. Jaffa, 143 F.2d 340 (8th Cir. 1944); Gridiron Steel Co. v. Jones & Laughlin Steel Corp., 361 F.2d 791 (6th Cir. 1966); Peter Kiewit Sons' Co. v. Summit Construction Co., 422 F.2d 242 (8th Cir. 1969); Christenson v. Felton, 322 F.2d 323 (9th Cir. 1963); and George W. Garig Transfer v. Harris, 75 So.2d 27 (La. S. Ct. 1954).

Gas Co. v. *Cities Service Gas Co.*, 507 P.2d 1236 (Okla. 1972), *appeal dismissed and cert. denied*, 409 U.S. 1052 (1972). Accordingly, it is entirely appropriate that the Commission in implementing the Act should recognize traditional common law principles to avoid defeating those claims. Here, common law principles dictate that Arkla should be regarded as having received the notice that section 4(d) of the Act requires.

8. Under the well-established principles of law, equity, and justice as consistently applied and enforced by the courts in the cases just cited, it is clear that any claim of detriment to Arkla as the wrongdoer in this case through the grant of a waiver is *not* a factor for consideration. And since the public interest against excessive prices for residue natural gas as sold in interstate commerce has been fully protected by the maximum area rate ceilings, there is no just basis for the literal application of any filing requirement or denial of any necessary waiver. A waiver should in the interest of justice be granted.

WHEREFORE, if the Commission believes that a waiver of the notice and filing requirements of section 4(d) of the Natural Gas Act is necessary under the circumstances of this case, such a waiver should be granted.

Respectfully submitted,

/s/ Terry Coleman
JEROME ACKERMAN
TERRY COLEMAN

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888 16th Street, N. W.
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/s/ James Fleet Howell
JAMES FLEET HOWELL

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411 CNB Building
Shreveport, Louisiana 71101

ATTORNEYS FOR RESPONDENTS

May 24, 1979

EXHIBIT A

ARKANSAS LOUISIANA GAS COMPANY

SHREVEPORT, LOUISIANA

November 15, 1962.

Mr. J. R. Reeve, Regional Oil and Gas Supervisor,
United States Geological Survey,
521 Wright Building,
115 West 3rd Street,
Tulsa 3, Oklahoma.

In re: Oil aand Gas Lease BLM-A-054491,
Sligo Field, Louisiana, Parcel No. 3

Dear Sir:

This refers to your letter to Natural Gas and Oil Company of October 12, 1962 and conference between the undersigned and you in your office in Tulsa on October 19th.

By your letter of March 27, 1962 you determined prices, so far as concerns the Government's royalty gas of $0.117432 per mcf until January 1, 1962; $0.130252 until January 1, 1967 and thereafter $0.140508 at a pressure base of 15.025 p.s.i.a. In view of the Government's right under the lease contract to determine the value of its royalty gas, but without conceding that the above figures represent market value in the Sligo Field, we have decided that we should accede to the determination and have initiated the proper procedures in our organization to see that accounting and payment is made for Arkansas Louisiana Gas Company's share of the gas at the above figures.

Very truly yours,

/s/ J. C. Templeton
J. C. TEMPLETON,
Vice President.

cc: Murphy Corporation
Union Producing Company
Texas Gas Exploration Corporation
Natural Gas and Oil Comapny

VERIFICATION

STATE OF LOUISIANA
PARISH OF CADDO

James Fleet Howell, a member of the Law Firm of Wiener, Weiss, Madison & Howell, Shreveport, Louisiana, being duly sworn, deposes and says that he represents Frank J. Hall, et al, the Respondents herein, and that he is authorized on behalf of Respondents to execute and file the foregoing pleading with the Federal Energy Regulatory Commission and that he has read said pleading, is familiar with the contents thereof, and that all of the statements of fact therein set forth are true and correct, to the best of his knowledge, information, and belief.

/s/ James Fleet Howell
JAMES FLEET HOWELL

SUBSCRIBED AND SWORN TO before me, Notary, this 17th day of May, 1979.

/s/ Johnny Smith Duw
NOTARY PUBLIC in and for Caddo Parish, La.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of Section 1.17 of the Rules of Practice and Procedure.

Dated at Washington, D.C. this 24th day of May, 1979.

/s/ Terry Coleman
TERRY COLEMAN